The Central Law Journal.

ST. LOUIS, MARCH 30, 1888.

CURRENT EVENTS.

DEATH OF MR. CHIEF JUSTICE WAITE.—The country and the profession have been deeply shocked and grieved by the announcement of the sudden death of the highest judicial officer of the nation, Mr. Chief Justice Waite. This eminent jurist had held the high position which he adorned for a period far too short for the benefit of his country, and yet long enough to put to the test his qualifications for that office, and to exhibit the loftiest traits, and purest elements of character which appertain to that eminent position. "The fierce light that beats upon a throne," is not more vivid than that which falls upon those who occupy high places in a republic, and the character of Mr. Chief Justice Waite grows brighter and more perfect under the scrutiny which it invites and facilitates. He was the latest chief of a long line of public servants, who, for a century, have with singular purity, probity and ability administered the judicial branch of the federal government, and it is but bare justice to say that his character, public and private, will compare favorably with the best and ablest of that noble line.

LEGAL EDUCATION.—One of our English exchanges alludes to a scheme for inaugurating in one of the inns of court, a system of legal education, which shall include many topics of philosophy, science and art, likely to be of service to the pupils in their future careers. Our contemporary suggests that the net results of the project will probably be that the pupil will learn a little of many things, and, very possibly, only a little, a very little law, and in this we are inclined to think he is right. We take this occasion to express our sentiments on the subject of "legal" education. They are very plain and simple. We think that the real object of legal, as of all other education worthy of the name, except in its primary phases, should be to teach the pupil how to learn, so to train his mind, that when his so-called education is complete, when the diploma has been attained, when he ceases to be taught, he can begin to learn, to acquire knowledge by the exercise of his own faculties, to walk alone without the supporting hand of the nurse.

Legal education presupposes an antecedent education, more or less liberal; in our judgment, the more liberal the better. Education being merely the training of mental faculties for future work, it is obvious that the more thorough the training the more favorable will be the probable result. And it is comparatively immaterial whether the appliances used for this purpose, if otherwise suitable, are practically useful or not. Latin and Greek have for many generations been used for the purpose of training the minds of the young, and are probably the most useful, even if, as some utilitarians vainly imagine, those languages were of no practical value. We remember that when in the long, long ago, in our callow youth we struggled with the elements of the Latin tongue, we had reached that "*pons asinorum*," the "bridge" chapter in Cæsar's commentaries, we learned for the first time that Latin was a real language which certain unfortunate people, long since dead, had actually talked, and in which they had written the abominations that were daily set before us. We were magnanimous enough to commisserate their sad fate in being compelled, all their lives long, to speak such awful gibberish as we daily floundered through, and rather wondered that they could possibly understand each other without incessant reference to that dreary volume, Answorth's Latin Dictionary. It will be perceived that we had gotten our ideas pretty badly mixed, but we were then *very* young, and had regarded Latin as a cruel combination of connundrums, contrived by the diabolical ingenuity of school-masters for the torment of little boys, abridging their enjoyment of the flower of their youth, and limiting their indulgence in base ball, hop-scotch and marbles.

Even if these crude, youthful speculations had been correct, Latin, though shorn of all interest to the mature, would be equally useful as mental exercitation for the school-boy, although not for more advanced scholars.

We find that we have wandered far afield, traveled sadly out of the record, and now scramble back into the legal fold with all possible expedition. The object of a legal education and its methods are identical.

Legal education is but a continuation of general education, and an application of its acquisitions to a special subject. The end and object of general education being to quicken and improve the faculties of perception, ratiocination and memory, so as to be more available in the future life of the pupil; that of legal education, is to teach the pupil to use those faculties to the best advantage in the attainment of legal knowledge. It should never be forgotten that the career of a true lawyer consists of the constant and continuous acquisition of legal knowledge; that all the knowledge of the best graduate of a law school, him of the prize essay and the first honors, constitute but a modicum of what he should know, ten years later, if he shall fulfill the promise of his youth; and that, taken in its highest sense, the legal education of a jurist closes only on his death-bed. The accumulation of legal knowledge being the steady and incessant business of a lawyer's life, it follows that the chief end and aim of preliminary education, or what is usually called legal education, should be to teach the neophyte how to acquire that kind of learning most thoroughly, most rapidly and most accurately, *cito tute jucunde*, and to this, as the chief end of its existence, every law school should adjust its curriculum. Of course the leading principles of law and equity, civil and criminal, pleading and practice, should be taught as thoroughly as possible, and the young lawyers should be sent into the world with as much learning as can be crammed into him, but especially with a thorough knowledge of how and where he can best acquire more.

We think it is injudicious to admit into the course of study of law students such collateral branches of learning as form the subject-matter of what are usually called "specialties," and in this the English scheme to which we have alluded is erroneous. It is, of course, desirable that lawyers should know, not a little, but a great deal of everything, but it is a mistake to crowd into a course of study for law students alien matters which must needs, crowd out more or less of the legal learning which it is so necessary that they should acquire. Specialties, indeed, should come later; they usually result from the exigencies of professional business, and the particular taste or aptitude of individuals, and it is unwise to require or invite law students to devote to collateral matters the time and attention which should be bestowed upon legal studies. The law, pure and simple, can furnish ample occupation during the period of their novitiate, and yet leave enough to occupy their attention for many long years to come. Finally, preceptors in law schools should first teach their pupils how to study law, and then see that they do it, and any intermixture of collateral science should be sparing.

Before leaving this subject, we cannot refrain from expressing our gratification that the legal education in law schools, has so completely superseded the old no-system formerly so prevalent in the South and West, of "reading law in a lawyer's office." In a large majority of cases under that practice, the pupil (?) took his seat in the lawyer's office, and for six months or a year read Hume's History of England, Blackstone's Commentaries, Chitty on Pleading, Tidd's Practice and a few other similar works, without any systematic guidance or instruction, and generally without any guidance at all. And when, after this short probation, he had obtained his license by virtue of a nominal examination by a circuit judge, he could not, by reason of anything he had learned in his preceptor's office, draw a declaration in *assumpsit*, or a plea in abatement, to say nothing of such an intricate pleading as a bill in equity. It is one of the most notable of the miracles of the profession, that so many really excellent lawyers who have attained eminence at the bar and on the bench, began their career under these unfavorable circumstances.

NOTES OF RECENT DECISIONS.

ESTATES—REMAINDER — DEATH OF LIFE TENANT BEFORE TITLE VESTED.—The Supreme Court of the United States recently

decided a case,[1] settling the law as to the lapsing of legacies, which are limited to begin upon the occurrence of an event expected to take place after the death of a precedent legatee, but which actually occurred before the death of the testator.

The facts were, that the property in question was devised and bequeathed by the testator to his widow for life, upon her death to his two sisters for life, and upon their death to certain charities, in fee. The two sisters died within the life-time of the testator, and upon a bill for the construction of the will filed by the widow, the chief question involved was whether the legacies to the charitable institutions lapsed because the sisters died within the life-time of the testator. The court held that they did not so lapse, regarding the rule laid down by Mr. Jarman in his treatise on Wills,[2] as inapplicable to the case, and as merely a rule of construction. The court said: "But little aid, however, in such cases, is to be delivered from a resort to formal rules, or a consideration of judicial determinations in other cases apparently similar. It is a question in each case of the reasonable interpretation of the words of the particular will, with the view of ascertaining through their meaning the testator's intention." The rule seems to be that the decision of the question depends upon the intention of the testator, and the court must carry it into effect, not upon mere conjecture, but by a fair interpretation of the language which has been used.[3]

Upon this principle the court, construing the will in question, held that the testator did not mean that the legacies to the charitable institutions should be otherwise dependent upon those to the sisters, than that they should take effect after the latter were determined. If property be limited by death, and the first donee predecease the testator, the gift over will take effect.[4]

[1] Robison v. Female Orphan Asylum, 8 S. C. Rep. 327.
[2] 1 Jarm. Wills (5th Am. ed., by Bigelow), 831. See also Boosey v. Gardner, 5 DeGex, M. & G. 122.
[3] Metcalf v. Framingham Parish, 128 Mass. 370, 374; Ferson v. Dodge, 23 Pick. 287; Towns v. Wentworth, 11 Moore P. C. 526; Abbott v. Middleton, 7 H. L. Cas. 58; Greenwood v. Greenwood, 5 Ch. Div. 954.
[4] Willing v. Baine, 3 P. Wm. 113.

MEMORANDUM TO REFRESH RECOLLECTION OF WITNESS.

SECTION.
1. By Whom Made.
2. Time when Made.
3. How Made—May Consist of what.
   a. Stenographic Writings.
   b. Copies.
   c. Previous Testimony, Deposition or Affidavit of the Same Witness.
   d. Books of Account, Bills of Particulars, etc.
4. Memorandum, How Used at the Trial.
   a. Not Necessary that the Witness Should have an Independent Recollection of the Fact.
   b. Right of the Other Party to Inspect the Document.
   c. Manner in which Memorandum Used by Witness.
   d. Whether Memorandum Can be Put in Evidence.

§ 1. *By Whom Made.*—In conformity with the text of Greenleaf,[1] the prevailing, though not universal[2] view now is, that it is not necessary that the memorandum which a witness may use to refresh his recollection, should have been made by the witness himself, provided that, after reading it he can speak to the facts from his recollection,[3] or can swear positively to them from the memorandum,[4] and provided also it is used for the sole purpose of refreshing his recollection, and not for the purpose of acquiring original information.[5] It is, therefore, scarcely necessary to say that, where a witness swears that he has a complete recollection of the facts, it makes no difference that the memoranda which he uses to refresh his memory are not his own notes.[6]

§ 2. *Time When Made.*—Professor Greenleaf says: "It is most frequently said that the writing must have been made at the time of the fact in question, or recently afterwards. At the furthest, it ought to have been made before such a period of time has elapsed as

[1] 1 Greenl. Ev., § 436.
[2] See, for instance, State v. Rhodes, 1 Houst. (Del.) Crim. Cas. 476, 480.
[3] Berry v. Jourdan, 11 Rich. L. (S. C.) 67; Davis v. Field, 56 Vt. 426, 428; Com. v. Ford, 130 Mass. 64; Huff v. Bennett, 6 N. Y. 337; Henry v. Lee, 2 Chit. Rep. 124; 1 Whart. Ev. § 516; State v. Lull, 37 Me. 246.
[4] Martin v. Good, 14 Md. 398; Coffin v. Vincent, 12 Cush. (Mass.) 98; Hill v. State, 17 Wis. 675. Compare McCormick v. Mulvihill, 1 Hilt. (N. Y.) 131.
[5] Erie Preserving Co. v. Miller, 52 Conn. 444; Jaques v. Horton, 76 Ala. 239, 243.
[6] Cameron v. Blackman, 39 Mich. 108.

to render it probable that the memory of the witness might have become deficient. But the practice in this respect is governed very much by the circumstances of the case."[7] The memorandum must have been reduced to writing at, or shortly after, the transaction, and while the transaction must have been fresh in the memory of the witness. It must have been "presently committed to writing,"[8] "while the occurrences mentioned in it were recent and fresh in his recollection;"[9] "written contemporaneously with the transaction,"[10] or "contemporaneously, or nearly so, with the facts deposed to."[11] Where the witness uses a *copy* of his memorandum for the purpose of refreshing his memory, it is immaterial when the copy was made, if it sufficiently appear that it is a correct copy.[12] It is said that in respect of the time when a memorandum was made much must be left to the discretion of the trial court, who sees the witness and hears him testify; accordingly, where the witness said that he made the entries at the time of the work, and again, that he made them within a month or so, but that he remembered it until he wrote it down, it was held that there was no error in allowing him to use the memorandum to refresh his recollection. The court said: "The witness having testified that he remembered the items of labor when he wrote them down, the lapse of time was not such, considering the nature of the account, as to forbid the court, in the exercise of its discretion, allowing the witness to use the account to refresh his memory."[13] "The reasons," said Mr. Justice Gray, "for limiting the time within which the memorandum must have been made are, to say the least, quite as strong when the witness, after reading it, has no recollection of the facts stated in it, but testifies to the truth of those facts only because of his confidence that he must have known them to be true when he signs a memorandum."[14]

§ 3. *How Made—May Consist of What.* (*a.*) *Stenographic Writings.*—It seems to be no objection that the memorandum used by a witness to refresh his memory, if written by himself, is in characters which he alone can read. This opinion was held in a case where the memorandum was written in phonographic characters, peculiar to the wifness.[15]

(*b.*) *Copies.*—It is not necessary that the writing used for this purpose should be an original writing, but a copy taken by the witness may be used, provided that, after inspecting the copy the witness can speak to the facts from his recollection.[16] "The rule is subject to the limitation, that the witness must be able to testify that the original entry, when made, was a true statement of the facts, and the copy must be verified."[17] A clerk may also use for this purpose copies of papers on file in his office, which relate to the business which passes under his supervision.[18]

(*c.*) *Previous Testimony, Deposition or Affidavit of the Same Witness.*—There is a difference of opinion whether the previous deposition, testimony, or affidavit of a witness can be used by him for the purpose of refreshing his memory. In one jurisdiction the deposition of a witness previously made by him may be so used,[19] and it is not error to allow a witness, on a criminal trial, to refresh his memory by reference to the minutes of his testimony given before the grand jury,

[7] 1 Greenf. Ev., § 438.

[8] Lord Holt in Sandwell v. Sandwell, Comb. 445; s. c., Holt, 295.

[9] Lord Ellenborough in Burrough v. Martin, 2 Camp. 112.

[10] Tindal, C. J., in Steinkeller v. Newton, 9 Carr. & P. 313.

[11] Wilde, C. J., in Whitfield v. Aland, 2 Carr. & K. 1015. To the same effect, see Burton v. Plummer, 2 Ad. & El. 341; s. c., 4 Nev. & Man. 315; Wood v. Cooper, 1 Carr. & K. 645; Morrison v. Chapin, 97 Mass. 72, 77; Spring Garden Ins. Co. v. Evans, 15 Md. 54; Nicholls v. Webb, 8 Wheat. (U. S.) 326, 337; Ins. Co. v. Weide, 9 Wall. 677 and 14 Wall. 375; Chaffee v. U. S., 18 Wall. 516. Instances: *Two weeks*, too long. O'Neale v. Walton, 1 Rich. L. (S. C.) 234. So, under circumstances, the *next day*. Ballard v. Ballard, 5 Rich. L. 495. So, of *sixteen months*. Swartz v. Chickering, 58 Md. 291, 298. So, of a memorandum made *five months* after the transaction at the request of a party. Spring, etc. Ins. Co. v. Evans, 15 Md. 54.

[12] Lawson v. Glass, 6 Colo. 134.

[13] *Ibid.*

[14] Maxwell v. Wilkinson, 113 U. S. 656, 658; citing Halsey v. Sinsebaugh, 15 N. Y. 485; Marcly v. Schults, 29 N. Y. 346, 355; State v. Rawls, 2 Nott. & McC. (S. C.) 331; O'Neale v. Walton, 1 Rich. L. (S. C.) 234.

[15] State v. Cardoza, 11 S. C. 195, 238.

[16] Lawson v. Glass, 6 Colo. 134; Jaques v. Horton, 76 Ala. 238, 244; Berry v. Jourdan, 11 Rich. L (S. C.) 67.

[17] Calloway v. Varner, cited in Jaques v. Horton, 76 Ala. 244.

[18] Erie Preserving Co. v. Miller, 52 Conn. 444, 446; s. c., 52 Am. Rep. 607. Use of copy of *defaced* copy of *defaced* original permitted: Folsom v. Apple River, etc. Co., 46 Wis. 602, 606.

[19] Hull v. Alexander, 26 Iowa, 569. See Atkins v. State, 16 Ark. 568; Burney v. Ball, 24 Ga. 505; Beaubien v. Cicotte, 12 Mich. 469.

although the minutes are not in his handwriting.[20] In another jurisdiction, it is ruled that a witness in a criminal trial may, for the purpose of refreshing his memory as to certain dates, be permitted to read over the minutes of his testimony as given on the preliminary examination before a magistrate, where, after so refreshing his memory, he testified from memory to the facts.[21] The rulings conform to the view above stated,[22] that it is not necessary that the memorandum should have been made by the witness himself. But, if they are sound in principle, what becomes of the rule that the memorandum should be made at, or near the time of the transaction to which the testimony relates? It is believed that they are unsound in principle, and that the true view is that taken in Pennsylvania, that a party cannot refresh the memory of his own witness by reading to him notes of testimony given by him in a former proceeding, touching the same subject-matter,[23] though in that State the rule seems to be otherwise in the case of a witness, who, since the former trial, has lost his health and memory.[24] But the mere fact that a witness fails to recollect what he had previously sworn to, where he has not, by reason of old age or otherwise, lost his memory, will not be sufficient to admit the notes of a former trial. The court said: "He probably failed to recollect what he had previously sworn to, but if this were enough to admit the notes of the former trial, we might as well abandon original testimony altogether, and supply it with previous notes and depositions. It would certainly be an excellent way to avoid the contradiction of a doubtful witness, for he could always be thus led to the exact words of his former evidence. As we are not yet prepared for an advance of this kind, we must accept the ruling of the court below as correct."[25] On the same view it has been held that an affidavit, made by the witness some three years after the occurrence of the transaction in question, and shortly before the trial, at the request of the defendant's counsel, could not be so used by the witness, since it "would be calculated to stimulate his courage rather than his veracity." The court said: "We think the practice of procuring such papers, and then using them ostensibly for the purpose of refreshing the recollection of a witness who appears to be adverse, but really to intimidate him, ought not to be encouraged or sanctioned. The proper course is to examine the witness in the usual way, and, if his testimony be in contradiction of written statements previously made by him, to interrogate him respecting the latter, for the purpose of probing his recollection, and of obtaining an explanation of his inconsistency."[26] But where a witness is cross-examined as to his testimony in a previous deposition, there is no good reason why he should not be allowed to refresh his memory by looking at the deposition.[27]

d. Books of Account, Bills of Particulars, etc.—This question must be kept distinct from from the question under what circumstances books of account, shown to have been correctly kept, are admissible as original evidence. On grounds already suggested, books of account kept by the witness, or known by him to be correct, may be used by him as memoranda for the purpose of refreshing his recollection.[28] Thus, an invoice book, known by the witness to be in the plaintiff's handwriting, the witness having been present when it was made, and it being correct so far as the witness knows, has been held such a memorandum as the witness might look to for the purpose of refreshing his memory as to character of the goods mentioned therein and their value.[29] So, where the question relates to the nature and value of property sold at an administrator's sale, it is competent for a witness to refresh his memory from an ac-

[20] State v. Miller, 53 Iowa, 154. Compare Com. v. Phelps, 11 Gray (Mass.), 73.

[21] White v. State, 8 Tex. App. 57, 62. See, also, Hubby v. State, 8 Tex. App. 592.

[22] *Ante*, § 2.

[23] Velott v. Lewis, 102 Pa. St. 326. See, also, Brown v. State, 28 Ga. 199.

[24] Rothrock v. Gallaher, 10 Norr. (Pa.) 108.

[25] Velott v. Lewis, 102 Pa. St. 326, 333, opinion by Gordon, J.

[26] Honstine v. O'Donnell, 5 Hun, 472; citing Bullard v. Pearsall, 53 N. Y. 230. Compare Harvey v. State, 45 Ind. 516.

[27] George v. Joy, 19 N. H. 544.

[28] White v. Tucker, 9 Iowa, 100; Flowers v. Downs, 6 La. Ann. 539; Davidson v. Lallande, 12 La. Ann. 826; Sackett v. Spencer, 29 Barb. (N. Y.) 180; Columbia v. Harrison, 2 Treadw. (S. C.) 213; Treadwell v. Wells, 4 Cal. 260; Chiapella v. Brown, 14 La. Ann. 189; Massey v. Hackett, 12 *Id.* 54; Jones v. Johns, 2 Cranch, C. C. 426; Reed v. Jones, 15 Wis. 40; Schittler v. Jones, 20 Wis. 412.

[29] Miller v. Jannett, 63 Tex. 82. So as to the invoices themselves, received with the goods by a *factor*: Bartlett v. Hoyt, 33 N. H. 151.

count of the sales kept by himself, and also to read the terms of the sale as they were read just before the sale commenced.[30] So, where the question was whether or not the defendant had deposited $1,000 with the plaintiff's bank on a given date and an offer was made to show that he had deposited the amount in another bank on that date, and that the entry had been made by the teller of such other bank in the wrong pass book, that is to say, in the pass book which contained the entries of the plaintiff's bank, and the book-keeper of such other bank was prepared to testify from an inspection of his daily figuring book, made in course of business at the time—it was held that the testimony should have been received, whether the books were admissible or not.[31] So, in a criminal trial the prisoner was time keeper and the witness was pay clerk of a colliery. The prisoner gave a time list to a clerk, who entered it in the time book, and on pay day the prisoner read from the time book the number of days each man had worked to the witness, who paid accordingly and who saw the entries of that time. It was held that, for the purpose of proving these payments, the witness might refresh his recollection by referring to the time book.[32] For this purpose a witness may use a book kept another clerk, if, from his connection with the business, he knows that the entries are correct, and testifies therefrom according to his own recollection.[33] So, a plaintiff testifying in his own behalf, may refresh his recollection, where he knows the facts, by reading from his bill of particulars, when that is a duplicate of the account rendered on which he sues, even though it was kept by his clerk from entries in his book, as to which the witness cannot say, without seeing them, whether or not he made them himself.[34] So, in a suit to recover the pay for boarding a lot of workmen, the plaintiff in his testimony referred to the bill of particulars made out by another person under his direction, and testified that he knew it to be correct. He testified from recollection to the number of men boarded, the rate per week at which they were boarded and the aggregate amount due therefor. It was held that it was proper to allow him to refer to this account, although he could not give the name of each man who boarded with him.[35] And where a bill of particulars contains many items, so that no person could be expected to remember them or to state them in detail without the aid of some memorandum made by himself or under his direction, it is discretionary to allow the witness to take the bill of particulars for the purpose of answering the question whether or not it contains a correct list.[36] It is sometimes admissible to permit a witness to refresh his memory by his books of account, although such books do not contain the original entries. The fact, however, that books of original entries have been lost or destroyed is ordinarily a suspicious circumstance proper to be considered by the jury.[37] Where the question was whether a party was a resident of the State at a particular date, and a witness was testifying, who made the tax-list, and who had signed and sworn to it, it was here stated he might use it as a memorandum to refresh his recollection.[38] Whether the writing be used merely as an instrument for restoring the recollection of a fact, or be offered to be read as containing a true account of transactions entirely forgotten, it must, in conformity with the general principles of evidence, be the best evidence for the purpose that the case admits of.[39] When, therefore, the subject of the testimony is what took place at an interview between a person and the reporter of a newspaper, the reporter's notes of the interview, if in existence, would be the proper memoranda to be used by the witness in refreshing his recollection. But where the reporter testified that his notes of such an interview had been destroyed, and that he had read the published account of the interview printed from his minutes, had compared it mentally with his minutes and had found it to be correct, it was held that the printed article was the best evidence that the case admitted of, and that it might be used by the reporter, testifying as a witness, for the purpose of refreshing his memory as to what

[30] Cowles v. Hayes, 71 N. C. 230.
[31] Lawrence v. Stiles, 16 Bradw. (Ill.) 489.
[32] Reg. v. Langton, 2 Q. B. Div. 296.
[33] International, etc. R. Co. v. Blanton, 63 Tex. 109.
[34] Hudnutt v. Comstock, 50 Mich. 597, 601.
[35] Chicago, etc. R. Co. v. Liddell, 69 Ill. 639.
[36] Cool v. Snover, 38 Mich. 562.
[37] Murray v. Cunningham, 10 Neb. 167.
[38] Davis v. Field, 56 Vt. 426.
[39] 1 Stark Ev., 178.

took place at the interview.[40] But where it is sought to introduce the newspaper article itself as evidence, and not to allow a witness to use it for the purpose of refreshing his memory, the rule is said to be that it would be material to show, as a foundation for the introduction of the article, that the original manuscript from which it had been printed had been lost.[41]

§ 4. *Memorandum, How Used at the Trial. a. Not Necessary that the Witness Should have an Independent Recollection of the Fact.* —The old idea seems to have been that the use of the memorandum by the witness was permitted strictly for the purpose of refreshing his previous recollection of the fact, revivifying it, so to speak, and that it was for the witness then to testify, from his recollection, so refreshed, what the fact was.[42] But this idea seems to be pretty much exploded. At least, in several modern jurisdictions, it is held that all that is required is that the witness be able to swear that the memorandum is correct, although he may have forgotten the facts themselves.[43] "There seems," said Rowell, J., "to be two classes of cases on this subject: 1. Where the witness, by referring to the memorandum, has his memory quickened and refreshed thereby, so that he is enabled to swear to an actual recollection. 2. Where the witness, after referring to the memorandum, undertakes to swear to the fact, yet, not because he remembers it, but because of his confidence in the correctness of the memorandum. In both cases the oath of the witness is the primary, substantive evidence relied upon. In the former, the oath being grounded upon actual recollection, and in the latter on the faith imposed in the verity of the memorandum, in which case, in order to judge of the credibility of the oath and the reliance to be placed upon the testimony of the witness, the memorandum must be original and contemporary and produced in court." [44] The idea upon which many modern decisions unite is that it is sufficient if the witness is able to swear that he knows from the memorandum that certain facts are true, although, independently of the memorandum, he may have no present recollection of them.[45] The same idea is sometimes expressed by saying that the witness may, from his memorandum, testify to his supposition or belief of the fact which is stated in the memorandum. Thus, a witness has been allowed to testify to his supposition and belief as to the time when a transaction took place, although he had no recollection as to the time independently of the entry in his cash book.[46] So, a notary's belief that protest and notice were given, based on his entry in his books, his habit being to make such entries on the happening of the event, is evidence, though he has no recollection of the fact independently of his books.[47] The same rule is applied where a surveyor uses his field book to refresh his memory.[48] So, where a witness was shown a receipt given for the payment of money signed by himself, he was permitted to say that he had no doubt that he received the money, although he had no recollection of it, and this was held sufficient parol evidence of the payment.[49] So in regard to an attesting witness. It is not generally necessary that he should be able to recollect the circumstances attending his attestation, or the fact that he saw the maker of the instrument sign it. It is enough, *prima facie*, if he answers to his signature,

[40] Clifford v. Drake, 14 Bradw. 75; s. c., affirmed, 110 Ill. 135. See, also, Tipham v. McCregor, 1 Carr. & K. 320; Com. v. Ford, 130 Mass. 64; Addler v. Railroad Co., 56 Ill. 344; Strader v. Snyder, 67 Ill. 404; Adams v. Kelly, Ry. & M. 157; Burton v. Plumer, 2 Ad. & El. 341.

[41] Clifford v. Drake, 14 Bradw. (Ill.) 75.

[42] Redden v. Spruance, 4 Harr. (Del.) 217; Key v. Lynn, 4 Litt. (Ky.) 338; Harrison v. Middleton, 11 Gratt. (Va.) 527; Holmes v. Gayle, 1 Ala. 517; Vastbinder v. Metcalf, 3 Ala. 100; Bank v. Brown, Dudley (Ga.), 62; Huckins v. People's, etc. Co., 31 N. H. 238; Clark v. State, 4 Ind. 156; Calvert v. Fitzgerald, Litt. Sel. Cas. (Ky.) 388; Lawrence v. Baker, 5 Wend. (N. Y.) 301; Owings v. Shannon, 1 A. K. Marsh. (Ky.) 188.

[43] Davis v. Field, 56 Vt. 426, 428; Downer v. Rowell, 24 Vt. 343; Halsey v. Sinesbaugh, 15 N. Y. 585; Russell v. Hudson, etc. Co., 17 N. Y. 134; State v. Colwell, 3 R. I. 132; O'Neale v. Walton, 1 Rich. L. (S. C.) 234; Mattocks v. Lyman, 16 Vt. 113; Eby v. Eby, 5 Pa. St. 435; State v. Rawls, 2 Nott. & McCord (S. C.), 331. Well illustrated, in the case of an old and feeble witness, by Cooper v. State, 59 Miss. 262, 272.

[44] Davis v. Field, 56 Vt. 426, 429.

[45] State v. Rawls, 2 Nott. & McC. (S. C.) 331; Dugan v. Mahoney, 11 Allen (Mass.), 572; Cowles v. State, 50 Ala. 454; Wright v. Bolling, 27 Ala. 259; Stephens v. People, 19 N. Y. 549. See, also, Rex v. Ramsden, 2 Carr. & P. 603; Guy v. Mead, 22 N. Y. 462; Ins. Co. v. Weide, 9 Wall. (U. S.) 677; Ins. Co. v. Weides, 14 Wall. (U. S.) 375; Reynolds Steph. Ev., art. 136; 1 Greenl. Ev., § 437.

[46] Mattocks v. Lyman, 16 Vt. 113.

[47] Davis v. Field, 56 Vt. 426, 428, per Rowell, J.

[48] 1 Whart. Ev., § 518.

[49] Maugham v. Hubbard, 8 Barn.

and testifies that it would not have been affixed to the instrument but for the purpose of attestation.[50] But where a witness, testifying to transactions relating to the sale and delivery of goods which were the subject of a book account, said, "I have no present recollection of the transaction, and can only speak now of the amount by what I swore on a former trial of this action," it was held that his testimony was properly rejected,[51] the court reasoning, according to the old idea, that the witness must testify from his recollection as thus refreshed. If a document, made by the witness and containing an account of the transaction about which he is called upon to testify, is handed to him to refresh his memory, and he does not need it for that purpose, no error will be committed by allowing him to take the document. To place in his hands the memorandum, under such circumstances, is regarded as the doing of an idle thing, which does not prejudice the party against whom he testifies.[52]

b. Right of the Other Party to Inspect the Document.—Where a paper is handed to a witness in order to refresh his memory, the other party has a right to inspect it for the purpose of cross-examination, and it is error to deny this right.[53] But he has only the right to inspect such parts of it as he consults to aid his memory, or as relate to the subject of his testimony.[54] But this rule seems to apply only in cases where the memorandum is used by the witness in court; it has been held that the memorandum itself need not be produced in court, but that notes taken from it may be used.[55] Accordingly, where the superintendent and house surgeon of a hospital, after having refreshed their memories by the records of the hospital, testified, from their own recollection, as to certain facts therein contained as to the admission of a patient into the hospital, etc., it was held that the court committed no error in receiving this testimony without the production of the books in open court.[56] A witness, it seems, may refresh his memory from memoranda made by him in books, without being required to produce the books;[57] at most, the productian of them, if he has not been summoned to produce them, will be a matter within the sound discretion of the trial court.[58]

a. Manner in Which Memorandum Used by Witness.—A witness may be required, in the discretion of the trial court, to look at a memorandum or papers, for the purpose of aiding his recollection.[59] The manner in which a witness shall be allowed to refresh his recollection by referring to a writing must be left to some extent to the discretion of the presiding judge, a discretion to be exercised with reference to the circumstances of the case, and sometimes it is presumed, with reference to the conduct and bearing of the witness upon the stand.[60] Thus, it is within the discretion of the court to refuse to require the witness to examine all the memoranda before giving his testimony, and then to lay them aside and not refer to them again while testifying, especially where they consist of numerous large books.[61] If the witness cannot read and write, but has nevertheless made his mark to a certain memorandum produced to refresh his recollection, it may not be read to the witness in the presence of the jury, but the witness may be permitted to withdraw with one of the counsel on each side, and the paper may there be read over to him without comment, after which he may testify from his recollection as thus refreshed.[62]

(*d.*) *Whether the Memorandum can be put in Evidence.*—Upon this point it is difficult to state a uniform or satisfactory rule. One

[50] Alvord v. Collins, 20 Pick. 418; Burling v. Paterson, 9 Carr. & P. 570; 1 Whart. Ev., § 739.

[51] Howie v. Rea, 75 N. C. 326.

[52] Chute v. State, 19 Minn. 271.

[53] Chute v. State, 19 Minn. 271; Rex v. Ramsden, 2 Carr. & P. 603; Hardy's Case, 24 How. St. Tr. 824; Merrill v. Ry. Co., 16 Wend. 600; 1 Greenl. Ev., § 466; Tibbetts v. Sternberg, 66 Barb. 201; Com. v. Jefs, 132 Mass. 5; Com. v. Haley, 13 Allen (Mass.), 587.

[54] Com. v. Haley, *supra*.

[55] Hamilton v. Rice, 15 Tex. 382; *Ante*, § 4, subsec. *b*.

[56] State v. Collins, 15 S. C. 373; s. c., 40 Am. Rep. 697.

[57] Trustees v. Bledsoe, 5 Ind. 133; State v. Cheek, 13 Ired. L. (N. C.) 114. This ruling will not apply to *books of account*, which, on proof of their having been correctly kept, become, in some jurisdictions, original evidence. See Furman v. Peay, 2 Bail. (S. C.) 394; State v. Cardoza, 11 S. C. 239; Bank v. Zorn, 14 S. C. 444.

[58] Com. v. Lanman, 13 Allen (Mass.), 563. *Contra*, that the books must be produced: Hall v. Ray, 18 N. H. 156.

[59] Chapin v. Lapham, 20 Pick. (Mass.) 467.

[60] Johnson v. Coles, 21 Minn. 108, 111.

[61] *Ibid.* It is proper to allow witness to refer to a book of original entries made by himself for the purpose of *fixing dates:* McCausland v. Ralston, 12 Nev. 196.

[62] Com. v. Fox, 7 Gray (Mass.), 585.

idea admits the memorandum in evidence in connection with the testimony of the witness.[63] But the general rule seems to be that the fact that the recollection of the witness has been refreshed by the use of a memorandum, so that he is able to testify to the fact, does not entitle either party to put the memorandum in evidence.[64] On the other hand, it is held that, "if the witness, after examining the memorandum, cannot state the facts from independent recollection, but can testify that he knew the contents of the memorandum at, or about the time it was made, and knew them to be true, both the memorandum and the testimony of the witness are admissible."[65] Or, negatively, the memorandum itself is not admissible in evidence, except in cases where the witness, at the time of testifying, has no recollection of what took place, further than that he accurately reduced the whole transaction to writing.[66] In other words, the entries or memoranda of transactions made by a witness are admissible only when the memory of the witness is at fault. If he can refresh his memory by an inspection of the writing, and then testify from personal recollection, the written *data* will be excluded from evidence.[67] When, therefore, a witness has testified from his own recollection to certain transactions in which he took part, *e. g.*, interviews between himself and the defendant, it was error to admit in evidence a written memorandum of such transactions kept by him, the entries in which were made at the time of the transactions, for the purpose of corroborating his testimony.[68] As already seen,[69] it is the right of the opposite party to inspect the memorandum and to cross-examine the witness in regard to it; "and it may be shown to the jury, not for the purpose of establishing the facts therein contained, but for the purpose of showing that it would not properly refresh the memory of the witness. But even in such a case, only those portions of the memorandum which relate to the cause on trial and the testimony of the witness can be put in evidence."[70] It is scarcely necessary to say that, where a witness uses a memorandum which itself is admissible in evidence, it is no objection that he reads from it to the jury, instead of its being read to the jury by counsel, according to the usual practice.[71]

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[63] Watson v. Walker, 23 N. H. 471; Webster v. Clark, 30 N. H. 245; Tuttle v. Robinson, 33 N. H. 104.

[64] Com. v. Jefs, 132 Mass. 5; Field v. Thompson, 119 Mass. 151; Alcock v. Royal Exchange Ins. Co., 13 Q. B. 292; Com. v. Ford, 130 Mass. 64; Com. v. Jones, 132 Mass. 5, 7.

[65] Jaques v. Horton, 76 Ala. 238, 243; Acklen v. Hickman, 63 Ala. 494.

[66] Kent v. Masson, 1 Bradw. (Ill.) 466.

[67] Halsey v. Sinsebaugh, 15 N. Y. 485; Russell v. Hudson River Co., 17 N. Y. 134; Guy v. Mead, 22 N. Y. 462; Marcly v. Schults, 29 N. Y. 346; Brown v. Jones, 46 Barb. 400; Driggs v. Smith, 45 How. Pr. (N. Y.) 447; Flood v. Mitchell, 68 N. Y. 507; Wightman v. Overhiser, 8 Daly (N. Y.), 282; Meacham v. Pell, 51 Barb. (N. Y.) 65; Butler v. Benson, 21 *Id.* 526.

[68] Wightman v. Overhiser, *supra*. Compare Folsom v. Fall River, etc. Co., 41 Wis. 602, 607.

[69] *Supra*, subsec. 1.

[70] Com. v. Jefs, 132 Mass. 5. Opinion by Endicott, J. Citing Com. v. Haley, 13 Allen, 537.

[71] Raynor v. Norton, 31 Mich. 210.

EVIDENCE — GIFT — AGENT — VALIDITY — INSTRUCTIONS.

HALL V. KNAPPENBERGER.

Supreme Court of Missouri, January 16, 1888.

1. Where an administrator charges that his decedent was induced to assign a note to the defendant by fraud and undue influence, under an answer denying the fraud and undue influence, and claiming the note as a gift, such defendant may show that the note was a gift, although the instrument containing an assignment of it recited that a valuable consideration was given for such assignment.

2. In such a case, the court told the jury that it was not necessary to show that the deceased was of unsound mind, but it was sufficient to show that he was disqualified by old age from entering into active business, that the defendant was his agent and adviser, and that the transfer was without consideration, to enable the administrator to recover the proceeds of the note: and refused to tell them that he was entitled to recover, unless it appeared affirmatively and conclusively that at and before the transfer the deceased was fully advised in the matter, and voluntarily made the transfer as a gift. This refusal was held to be right.

This action was brought by H. S. Hall, administrator *de bonis non* of John Reeves, deceased, plaintiff, against John Knappenberger, to recover the proceeds of a note of $5,000. This note was executed to said Reeves, deceased, by J. H. Baker and W. H. Neece, and afterwards transferred by a separate written instrument, by the deceased, to defendant, John Knappenberger. Knappenberger was nominated as executor in the last will of John Reeves, deceased, and was duly appointed administrator with the will annexed, January 31, 1880; gave bond, and inventoried no personal property except $15. On September 30, 1880, his authority

as administrator was revoked, and Hiram S. Hall was appointed to take charge of said estate as administrator *de bonis non* with the will annexed. The cause was tried to the court, and judgment rendered for the defendant, and plaintiff appealed, and assigns error. The assignments appear in the opinion.

NORTON, C. J., delivered the opinion of the court:

This suit was instituted by plaintiff as the administrator *de bonis non* of John Reeves, deceased, to recover the proceeds of a certain note alleged to belong to said Reeves, in his life-time, for $5,000. The petition alleges that defendant acted as the counselor, adviser and attorney of said Reeves in all his business transactions, and possessed his entire confidence; that the mental faculties of said Reeves had become impaired by reason of sickness, and the infirmities of old age, to such a degree as to render him incapable of guarding himself from imposition, or of the prudent and proper management of his affairs; that defendant, by virtue of his influence over the said Reeves as his counselor, adviser and attorney and agent, fraudulently, and with the intent to cheat and defraud said Reeves, induced and persuaded him, without any consideration paid or to be paid, to assign, transfer and deliver said note to defendant, which he collected, and, although often requested, refuses to pay over the same, or any part thereof. The answer of defendant, after denying the allegations of the petition, sets up that on the eighteenth day of March, 1878, the said Reeves, without any suggestion, solicitation, or influence of any kind on the part of defendant, or any one for him, by an assignment in writing, voluntarily gave to defendant the note mentioned in the petition; and that defendant received the same as such from said Reeves on the third of May, 1879, and collected, on a compromise with the makers of said note, the sum of $5,000, of all which said Reeves had full knowledge long prior to his death. It is further alleged that said Reeves had full mental capacity to transact all his business, and to dispose of his property. A jury being waived, the cause was tried by the court, and a judgment rendered for the defendant, from which the plaintiff has appealed, and assigns for error the action of the court in refusing to give instructions, and that the finding is against the evidence.

The evidence in the case shows that Reeves was an Englishman, and previous to his removal, in 1864 or 1865, to Carroll county, in this State, he had resided in McDonough county, Illinois, and owned a tract of land there, which, in 1877, he sold to I. H. Baker and W. H. Neece, taking their note for $5,000, payable on the first day of April, 1879, which note was left by him in the hands of C. V. Chandler, his agent in Illinois, who retained the same till he delivered it to defendant on the order or assignment of Reeves, dated March 18, 1878, and that defendant collected on said note $5,000 in April or May, 1879. The evidence further tends to show that Reeves at the time of his death, which occurred in January, 1880, was about 80 years old; that for some time previous to his death, as far back as 1876, he was afflicted with Bright's disease of the kidneys, and, while all the witnesses agree from that time on as to the fact that he was bodily weak and infirm, by far the largest number of them testified that he was capable of transacting business; many of them testifying that he was shrewd, strong-willed and not easily influenced. The evidence further shows that he had no relatives in this country, but had two nephews, Olford and Henry Lukins, living in England, and that in 1876 he made a will devising all his property to said nephews; the will being written by defendant. The evidence tended to show that he was anxious to induce one or both of these nephews to come to this country, and was disappointed in their not coming. It further appears from the evidence that in March, 1878, Reeves went to Brunswick, where he remained at a hotel about two weeks; during which time, while according to the evidence of several witnesses, including that of the landlord, he was weak and infirm from old age, he was capable to transact business. During his stay there he made the assignment of the note in controversy; it being written at his request, and by his dictation, by an attorney, with whom it was left, with directions to give it to the defendant. During this time he also made a conveyance of 80 acres of land to defendant, in trust for Edward Fields (at whose house he lived), in which it was stipulated that said Fields was to keep, maintain and clothe said Reeves in a comfortable manner during his life. He also made a deed to defendant for 80 acres of land, conditioned that defendant should pay to said Reeves during his life $100 annually, if demanded by him. He also made a deed conveying to defendant 160 acres of land, in trust for the sole benefit of Henry Lukins, of Draycolt, England, conditioned that the said Lukins pay to said Reeves during his life, at the end of each year, the sum of $200. While the evidence does not show that any of these acts were done at the solicitation or by procurement of defendant, it tends to show that they were prompted by Reeves' own will, and that he had sufficient capacity to understand the nature and effect of what he was doing; and that between that time and the time of his death, which occurred in 1880, he recognized the validity of these acts. It was also shown that defendant and Reeves had been acquainted with each other in Illinois; that they were friends; that defendant transacted some business for Reeves, and that he was often called upon to do so.

On this state of the evidence, plaintiff asked the following instructions, all of which were refused, except the fifth, which was given: (1) "In this case, if the testimony shows that at the time of the transfer of the $5,000 note by Reeves to Knappenberger, and for some years prior thereto, that Knappenberger was the business agent and adviser of said Reeves, and that no valuable consideration

was paid therefor; that the note was executed by a party then living in another State, where the same was to be collected; and that Reeves was old and feeble in body and mind, then the court declares, as a matter of law, that the alleged transfer and assignment was for collection, and the money, when collected, was the property of said Reeves; and plaintiff, as his administrator, is entitled to recover same in this suit, less his reasonable charges and expenses for collecting." (2) "In this case the transfer or assignment of the note read in evidence purports to be for a valuable consideration, and, unless it appears from the evidence that a valuable consideration was in fact paid, the plaintiff is entitled to recover, as the answer sets up and claims the same as a gift, and said transfer cannot be sustained as a gift when the instrument itself purports to be for a valuable consideration." (3) "If the evidence shows, in these case, that, at the time of the alleged gift of the note in controversy, the defendant was, and for several years had been, the business agent and adviser of Reeves; that Reeves was old and feeble, and incapacitated for active business by reason of age or infirmities, then the plaintiff, as administrator of the said Reeves, is entitled to recover the net proceeds of said note, unless it appears from the evidence, affirmatively and conclusively, that at and before said transfer the said Reeves was fully advised of the force and effect of the transfer, and fully understood the same, and voluntarily and freely made the same as a gift to the defendant; and if the instrument of writing read in evidence, prepared by Kinley, is the only evidence as to what transpired at the time of the alleged gift, such evidence is not sufficient in law to sustain the same as a gift." (4) "The only evidence in this case of the alleged gift of the note is the written instrument or transfer thereof written by Kinley, and read in evidence; and there is no evidence that the same was explained to Reeves, or that he fully understood the same, except the fact that it was written by Kinley at his request, and signed by said Reeves." (5) "In order to entitle the plaintiff to recover in this case, it is not necessary that the evidence should show that Reeves was of unsound mind, or that he was incapable of attending to business; but if the evidence shows that he was an old man at the time of the alleged transfer—between 75 and 80 years of age; that he was in feeble health, and disqualified by age or infirmities for active business; that defendant was at that time, and for some years prior thereto, his business agent and adviser; and that said alleged transfer was not for a valuable consideration, then the plaintiff is entitled, as a matter of law, to recover in this suit." (6) "On the facts and law of this case, the verdict and judgment should be for the plaintiff."

The first instruction was properly refused, if for no other reason than it was a clear departure from the case made in the petition. The second was also properly refused, inasmuch as, under the issue tendered in the answer, it was competent for defendant to show that the note was in fact given to defendant, notwithstanding the assignment purported to be for value. The fourth instruction was properly refused, if for no other reason than that Kinley not only testified that he drew the assignment at Reeves' request, but according to his directions. The third instruction was covered by the fifth, which was given, which carries to an extreme the doctrine of presumptive fraud arising from such fiduciary relations as guardian and ward, trustee and *cestui que trust*, spiritual adviser and advised, as announced in the cases of Garvin v. Williams, 44 Mo. 465, and Cadwallader v. West, 48 Mo. 483; and plaintiff has no cause of complaint on the score of refused instructions, in view of the one given, and, if error was committed in giving it, it is an error in favor of plaintiff. In the Garvin Case, in addition to the relationship of guardian and ward having been shown, it was shown that the ward had lived in the family of the guardian from his early youth, was sick with consumption, and, a short time after attaining his majority, made a will disinheriting his relatives, and devising his entire estate to his guardian. In the Cadwallader Case, West was his medical and spiritual adviser, and he had lived in West's family many years. West was the actor in procuring the conveyance assailed, admitted that Cadwallader required the watchfulness and care demanded in the oversight of children, and it also appeared that he was so deaf when the deed was made that it was a hard job to read it to him. From the weight of evidence, it appears that Reeves, though weak in body from age and disease, was capable of transacting business, strong of will and not easily influenced; rented out his land, collected rents and settled bills. While the evidence shows that Reeves and defendant were friends in Illinois and also in Missouri, and that Reeves often called upon him to transact business for him, it does not show any such relation of trust and confidence as existed in the cases above cited. It tends to show that Reeves, being disappointed in the expectation of getting his nephews to come to this country, determined to relieve himself from the trouble incident to looking after his property; undertook, without prompting from any one, so far as the evidence shows, to make such disposition of it as would secure to himself the most ample and abundant support as long as he lived; and this he provided for in the conveyances made by him of his land, one-half of which he gave to one of his nephews in England.

We see nothing in the record justifying an interference with the judgment, and it is hereby affirmed.

NOTE.—The law always looks with jealousy upon dealings between those having confidential relations with each other whenever such dealings are challenged in the courts. This is not only true of a gift, but as to a contract; as a contract between an agent and his principal.[1]

[1] Cook v. Berlin, etc. Co., 43 Wis. 433; Fox v. Mackreth,

Where an intestate, before her death, gave the defendant certain sums of money, and the evidence tended to show that previous to and at the time of the gift the intestate was of a feeble mental condition, of advanced age, that the defendant, who was not a relation of the intestate, was her physician, friend, adviser, judicial agent, and managed her affairs, having a considerable influence over her, it was held that the evidence raised such a presumption of fact that, if believed by the jury, it would justify a finding that the defendant in some form solicited the gift and used undue influence to obtain it. The trial court, in substance, instructed the jury that "when a fiduciary or confidential relation is established between a donor and a donee, a case arises for watchfulness on the part of those who have to pass on the validity of the gift to see that this confidence has not been abused by the exercise of undue influence. The mere existence of a confidential relation does not, as a matter of law, operate to bar the right of a beneficiary to receive such bounty. If the donor was, at the time, of sound mind, and clearly understood the transaction, and exercised a free will in the act, under no restraint or undue influence, such gift will be supported. But the law views transactions of this kind between such parties with some jealousy, and if, at the time of the gift, the donor's mind was enfeebled by age and disease, even though not to the extent of producing mental unsoundness, and the donor acted without independent and disinterested advice, and in the presence of the donee, and such gift was of a large portion of all the donor's estate, and operated substantially to deprive those having a natural claim to the donor's bounty of all benefit from the donor's estate, these circumstances, if proved and unexplained, would authorize a jury to find the gift void, through undue influence, without proof of specific acts and conduct of the donee. But when the donee is himself a witness, and other evidence is introduced, as in the present case, the whole matter is for the determination of the jury, and the general burden is on the plaintiff, taking all the evidence, natural presumptions and inferences together, to establish the proposition of undue influence." This was held not to be erroneous.[2]

In a New York case it was said: "A court of equity interposes its benign jurisdiction to set aside instruments executed between persons standing in the relation of parent and child, guardian and ward, physician and ward, solicitor and client, and in various other relations in which one party is so situated as to exercise a controlling influence over the will and conduct and interests of another. In some cases, undue influence will be inferred from the nature of the transaction, and the exercise of occasional or habitual influence."[3]

Thus the defendant had acted for many years as the confidential solicitor of the testator, a widower with no near relations, and the testator and he were on terms of great intimacy, he transacting all the testator's business; and the testator allowed him £100 a year, and by his will and codicil gave legacies to a considerable amount to him, his wife and children. The will and codicils were prepared by the defendant. The testator was also in the habit of advancing money to the defendant from time to time. The defendant, at the testator's request, prepared releases of various sums which had been lent him. These releases were sent to the testator, executed by him and returned to the defendant. Upon the testator having occasion to execute a further codicil, J, a solicitor from another city, was, at the defendant's suggestion, called in to explain to the testator the purport and effect of his will, numerous codicils thereto, and the releases. J attended and went through the various documents with the testator, and the codicil, which confirmed certain persons, and made some additional dispositions, was executed by the testator in J's presence. On the testator's death, the plaintiffs (relations of him) sought to set aside the releases as having been executed while under the professional influence of the defendant, and without proper independent advice. The defendant denied any undue influence, and contended that the testator had received proper independent advice from J. It was held that while the relationship of solicitor and client exists a gift from the latter to his solicitor cannot be sustained. That the relationship might be severed for the occasion, but that in the present instance this had not been done, but was in full force when the releases to the defendant were executed. The releases must, therefore, be set aside, as they were executed by the testator while under such influence, without proof that any independent advice was given, or that the parties were ever at arm's length, the attendance of J having been, not to advise or sever the relationship, but to ascertain whether the testator knew what he was doing.[4]

In the celebrated case of Hugnenin v. Baseley,[5] the same ruling was made with reference to a clergyman who had been made a legatee by a widow. The basis of the decision was that the legacy should be disallowed, because it was obtained by undue influence and abused confidence in the clergyman as an agent undertaking the management of her affairs. The principles which governed guardian and ward were applied to the case on the ground of public policy. The same point had been formerly so decided.[6] The ascendency acquired by a "medium" is a later illustration of the rule.[7] Where the rector of a church, which was a residuary legatee, and had the nomination of two scholarships created by the will in the theological seminary, who superintended its execution, and was named therein as sole executor, it was held that he was so interested in the will as to raise a presumption of undue influence, and to require proof of spontaneity and volition; that is, affirmative proof on the part of the executor of good faith, and a proper use of the confidence placed in him by the testator.[8]

T was an intimate friend of R's family and was R's guardian. R had the utmost confidence in, and friendship for him. When R became of age, T settled his accounts as guardian, but R employed the firm, of which T was a member, as his real estate agents. R made two wills in favor of T's children.

2 Cox, 320; s. c., 2 Brown C. C. 400; Torrey v. Bank of Orleans, 9 Paige, 649; Gillett v. Gillett, 9 Wis. 194; Rochester v. Levering, 104 Ind. 562; McCormick v. Malin, 5 Blackf. 522; Porter v. Woodruff, 36 N. J. Eq. 174; Young v. Hughes, 32 N. J. Eq. 372; Farnam v. Brooks, 9 Pick. 212; Moore v. Mandelbaum, 8 Mich. 433; Fisher's Appeal, 34 Pa. St. 29; 2 Pom. Eq. Jur. § 959.

2 Woodbury v. Woodbury, 141 Mass. 329.

3 Sears v. Shafer, 6 N. Y. 267; s. c., 1 Barb. 408, citing Casborne v. Barsham, 2 Beav. 75; Dent v. Bennet, 7 Sim. 539; Wood v. Downes, 15 Ves. 120; Huguenin v. Basely, 14 Ves. 273.

4 Morgan v. Minett, 36 L. T. (N. S.) 948.

5 14 Ves. p. 273.

6 Norton v. Relly, 2 Edw. 286.

7 Thompson v. Hawks, 14 Fed. Rep. 902; Lyon v. Home, L. R. 6 Eq. 655.

8 *In re* Welsh, 1 Redf. 238. See Middleton v. Sherburne, 4 G. & C. 358; Thompson v. Hefferman, 4 Dru. & War. 285.

He afterwards married the complainant, whom he had long known as a prostitute. After the marriage, upon T's suggestion whether R desired to carry out his former purpose, R made a gift of property, amounting to $40,000, about half of his estate, to T as trustee of his children, securing the income for life. Mrs. R filed her bill after R's death to set aside the gift on account of undue influence exercised by T over R. The gift was upheld, and it was held that a gift from a principal to his agent is valid, unless the person who seeks to avoid it can show that some advantage was taken by the agent of the relation in which he stood to the donor. If it appears that the conduct of the agent was fair, honest and *bona fide*, it is immaterial that the deed of gift may have been drawn up by his solicitor without the intervention of a third person. In this it differs from the English case just cited.[9]

Where the donor, an aged person, placed great confidence in the donee, to whose influence she was liable, a deed of gift was set aside, because the donee failed to show that the deed was the result of free will and effected by the intervention of some indifferent person.[10] A solicitor who had acted as the confidential friend of an infant, advanced money to him for the subsistence of himself and family. After the infant arrived at full age, and had appointed another solicitor, he signed a settled account with the first solicitor acknowledging the sums which he had received of him, and expressing gratitude for his services, upon which the vouchers on which the settlements were based were given up. No fraud or mistake was proved. But the court decreed that the account should be opened, on the grounds that the dependent had seen fit to place himself in a relation with the defendant which gave him great influence over his mind, and had not shown that when he signed the account he had the assistence of a friend or adviser.[11]

This rule applies to the relationship of parent and child, where the gift is by the latter to the former soon after he obtains his majority, or where he is under the constant and immediate influence of the parent, as residing with him, or while his property is in the parent's possession or control.[12] And the same is true of donations from the ward to the guardian, even with greater jealousy.[13]

These instances are sufficient to illustrate the general rule. It is a rule founded upon public policy, or as otherwise expressed, upon public utility. Such donations are set aside when made to a donee who stands in some confidential relation to the donor. The relief granted in such cases rests upon a general principle applicable to all relations in which dominion is exercised by one person over another.[14]

Notwithstanding this general rule, it was held that where a Roman Catholic bequeathed the most of her property to a priest, the burden of showing undue influence was on those alleging it.[15]

Burden of Proof.—Where a confidential relation is drawn in question, the burden of proof to sustain the transactions which took place under them rests upon him who claims a benefit under those transactions.[16]

It is said that the mere fact that the donor had very great confidence in the donee raises no adverse presumption. What was the conduct of the party receiving the gratuity, was it honest, and was the gift the voluntary act of the donor? is the question.[17]

Undue influence may be inferred from circumstances; direct proof of it is not required.[18] It may be gathered from the donor's health, age and mental condition; how far he was dependent upon and subject to the control of the person benefitted: the opportunity which the latter had to exercise his influence; and the disposition of the donor to be subject to it.[19]

In some cases, "undue influence will be inferred from the nature of the transaction and the exercise of occasional or habitual influence."[20]

"The fact of influence by the donee over the donor having been established, it is not necessary to show by absolute evidence that this was exercised by the donee at the time of making the gift. Undue influence must be exercised in relation to the gift made, and not as to other transactions, in order to invalidate a gift thus obtained. But if the jury find from the evidence that, at or about the time when the gift was made, the alleged donor was in other important particulars under the influence of the person receiving the gift, that, as to them, he was not a free agent, but was acting under undue influence, the circumstances may be such as to fairly warrant the conclusion, from the absence of any evidence bearing directly upon acts done when the alleged gift was actually made that, in relation to that also, the same undue influence was exerted."[21]

9 Ralston v. Turpin, 2 Fed. Rep. 7.

10 Griffith v. Robins, 3 Madd. 191.

11 Revett v. Harvey, 1 Sim. & S. 502. See Taylor v. Obee, 3 Price, 83; Fox v. Mackreth, 2 Cox, 327; Gibson v. Jeyes, 6 Ves. 277.

12 Wright v. Vonderplank, 8 DeG. M. & G. 133; Baker v. Bradley, 7 DeG. M. & G. 597; Bergen v. Udall, 31 Barb. 9; Taylor v. Taylor, 8 How. 183.

13 Hylton v. Hylton, 2 Ves. 547; Hatch v. Hatch, 9 Ves. 292; Fish v. Miller, Hoff. Ch. 267; Houghton v. Houghton, 15 Beav. 299.

14 Dent v. Bennett, 4 Myl. & C. 277; Rockefellow v. Newcomb, 57 Ill. 186; Yowland v. DeFarier, 18 Ves. 20; Shark v. Leach, 31 Beav. 49; Beever v. Wyatt, 3 Bro. C. C. 156; Nochtrieb v. Harmony Settlement, 8 Wall. p. 56; Week v. Perry, 36 Miss. 190; Hatch v. Hatch, 9 Ves. 292; Caspari v. First German Church, 12 Mo. App. 293; Ashton v. Thompson, 18 N. W. Rep. 918; Ford v. Hennessey, 70 Mo. 580; Bradshaw v. Yates, 67 Mo. 221; Ranken v. Patton, 65 Mo. 378; Street v. Goss, 62 Mo. 226; Gosti v. Langhrom, 49 Mo. 594; Cadwallader v. West, 48 Mo. 483; Harvey v. Sullens, 46 Mo. 147; Garvins v. Williams, 44 Mo. 465; s. c., 50 Mo. 206; O'Dell v. Burnham, 21 N. W. Rep. 635; Sprague v. Hall, 17 N. W. Rep. 743; Pratt v. Parker, 1 Sim. 1; s. c., 4 Russ. 509; McCormick v. Melin, 5 Blackf. 509; Uhlick v. Mukike, 61 Ill. 499; Hunter v. Atkins, 3 Myl. & K. 134.

15 Parfitt v. Lawless, L. R. 2 P. & D. 462; s. c., 41 L. J. P. & M. 68; 27 L. T. (N. S.) 215; 21 W. R. 200.

16 McCormick v. Melin, 5 Blackf. 509; Archer v. Hudson, 7 Beav. 551; Hylton v. Hylton, 2 Ves. 547; Hatch v. Hatch, 9 Ves. 292; Williams v. Powell, 1 Ired. Eq. 460; Chambers v. Crabbe, 34 Beav. 457; Garvin v. Williams, 44 Mo. 465; Todd v. Grove, 33 Md. 188; Berdoe v. Dawson, 34 Beav. 603; Ashton v. Thompson, 18 N. W. Rep. 918.

17 Toker v. Toker, 31 Beav. 621; Pratt v. Parker, 1 Sim. 1; s. c., 4 Russ. 507; Pressley v. Kemp, 16 S. C. 334; Uhlich v. Mukike, 61 Ill. 499; Worrall's Appeal, 1 Atl. Rep. 380.

18 Drake's Appeal, 45 Conn. 9.

19 Woodbury v. Woodbury, 141 Mass. 329; s. c., 5 N. E. Rep. 275; Howe v. Howe, 99 Mass. 88; Tyler v. Gardiner, 35 N. Y. 559; Sears v. Shaffer, 6 N. Y. 267; s. c., 1 Barb. 408; Siemon v. Wilson, 3 Edw. Ch. 36; Fish v. Miller, Hoff. Ch. 267; Bergen v. Udall, 31 Barb. 9; Gould v. Gould, 36 Barb. 270; Comstock v. Comstock, 5 Barb. 453; Ross v. Ross, 6 Hun, 80; Boyd v. Boyd, 66 Pa. St. 283.

20 Sears v. Shaffer, 6 N. Y. 268; s. c., 1 Barb. 408; Delafield v. Parish, 25 N. Y. 96; Reynolds v. Root, 62 Barb. 250; Tilton v. Tilton, 54 Pa. St. 216; Jackman's Will, 26 Wis. 104.

21 Woodbury v. Woodbury, 141 Mass. 329; s. c., 5 N. E. Rep. 265; Boyse v. Rossborough, 6 H. L. Cas. 2; Patterson v. Patterson, 6 S. & R. 55; Rabb v. Greham, 43 Ind. 1.

It is also true that the burden of proof of undue influence is upon the party alleging it; yet when the close intimacy is proven from which the law infers undue influence, the person who is charged with its exercise is called upon to rebut this presumption; and it is in this view that all the cases upon this subject must be considered. This is well illustrated in a gift by a principal to his agent when it is large and their intimacy is close; for proof of these alone will be sufficient to require the agent to rebut the charge of undue influence if he desires to retain the benefit of the donor's beneficence.[22]

This rule is extended to a gift from a father to a child, where the latter stood to the former in a confidential relation; and proof of this relation is sufficient to render the act of giving *prima facie* void.[23]

However, the exercise springing from the family relation, or from considerations of service, affection or gratitude, is not undue, though pressed to the extent of unreasonable importunity.[24]

The donee of a gift *causa mortis*, it is said recently, is not called upon to disprove fraud, or to show a sound and disposing mind in the donor.[25]

The question of undue influence is one for the jury.[26]

W. W. THORNTON.

[22] Webber v. Sullivan, 12 N. W. Rep. 319; St. Leger's Appeal, 34 Conn. 434; Wilson v. Moran, 3 Bradf. 172; Wright v. Howe, 7 Jones (N. C.), Eq. 412; Garvin v. Williams, 44 Mo. 465.

[23] Samson v. Samson, 67 Iowa, 253; Bowe v. Bowe, 3 N. W. Rep. 843.

[24] Tyler v. Gardiner, 35 N. Y. 558; Chandler v. Ferri, 1 Harr. (Del.) 454; Shailer v. Bumstead, 99 Mass. 112; Rankin v. Rankin, 61 Mo. 295; Stulz v. Schaeffle, 18 Eng. L. & Eq. 576; Potts v. House, 6 Ga. 324; Small v. Small, 4 Greenl. 220; Beaubien v. Cicotte, 12 Mich. 459; Childrens' Aid Society v. Loveridge, 70 N. Y. 387; Main v. Ryder, 84 Pa. St. 217. See Denton v. Franklin, 9 B. Mon. 28.

[25] Vandor v. Roach (Cal.), 15 Pac. Rep. 354.

[26] Osthous v. McAndrews, 8 Atl. Rep. 436.

WEEKLY DIGEST

Of ALL the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States.

1. ACCOUNT— Verification—Affidavit.——An affidavit, verifying an account, if positive so far as the account goes, is not rendered less so by affiant's belief, expressed therein, that more is due him.—*Howard v. Munford*, S. C. Ga., Dec. 7, 1887; 4 S. E. Rep. 907.

2. ACTIONS — Debts Paid—Jurisdiction.——A district court cannot entertain a suit to determine that certain claims have been paid, on which it is apprehended, the defendant may sue in a city court in unappealable amounts. — *State v. Voorhies*, S. C. La., Jan. 9, 1888; 3 South. Rep. 460.

3. ADVERSE POSSESSION—Limitations—Possession.—Where one has actual adverse possession of land, up to a particular fence, claiming it as his own for over twenty years, his title is matured as against a person holding the paper title.—*Riggs v. Riley*, S. C. Ind., Jan. 27, 1888; 15 N. E. Rep. 253.

4. APPEAL—Bill of Exceptions— Constitution.——The act providing that appeals from the city court of Barton may be reviewed upon a bill of exceptions, is unconstitutional. —*Maxwell v. Tumlin*, S. C. Ga., Dec. 16, 1887; 4 S. E. Rep. 858.

5. APPEAL—Bill of Exceptions—Settlement.——A bill of exceptions will not be dismissed because not presented in time to the trial judge, unless it was not presented within sixty days—*Sherwin v. O'Connor*, S. C. Neb., Jan. 18, 1888; 36 N. W. Rep. 491.

6. APPEAL — Bond — Final Judgment. —— When no final judgment was rendered, no action can be maintained on the appeal bond.—*Brounty v. Daniels*, S. C. Neb., Jan. 10, 1888; 36 N. W. Rep. 463.

7. APPEAL — Bond —Lien—Homestead.——Where an appeal is taken from a judgment refusing to declare a a lien invalid, because the properly was the homestead of the defendant and a bond was given by him, and judgment rendered against him upon the appeal, it was held that an action would lie upon the appeal bond, although the judgment did not declare in terms that the lien was valid.—*Oakley v. Van Noppen*, S. C. N. Car., Oct. 31, 1887; 5 S. E. Rep. 1.

8. APPEAL — Dismissal —Preliminary Injunction.—— When the complainant has dismissed his bill, the court will dismiss his bill of exceptions filed to obtain a review of an order denying a motion for a preliminary injunction.—*Burnett v. Fouche*, S. C. Ga., Jan. 20, 1888; 4 S. E. Rep. 900.

9. APPEAL—Dissolution of Corporation —Receiver.—— When the dissolution of a corporation organized under United States laws is alleged, but denied in the answer, an order appointing a receiver is not appealable.—*United States v. Late Corporation of Church*, S. C. Utah, Jan. 18, 1888; 16 Pac. Rep. 723.

10. APPEAL—Docketing—Dismissal.——An appeal returnable to the Octoble term, 1884, which ended May 4, 1885, is docketed too late January 17, 1886. Relying upon the clerk of the trial court to file the record is not suffi-

cient excuse for an exception to the rule.—*Fayolle v. Texas, etc. R. Co.*, U. S. S. C., Feb. 6, 1888; 8 S. C. Rep. 588.

11. APPEAL—Granting New Trial—Review.——When the trial court has granted a new trial for insufficiency of evidence, its action will not be reviewed on appeal.—*Tide, etc. R. Co. v. Cunningham*, S. C. Cal., Oct. 28, 1887; 16 Pac. Rep. 711.

12. APPEAL — Joint Trial. ——When two cases are by agreement tried together before the ordinary, and are so tried on appeal in the superior court, resulting in a mistrial, it is not error to try them together on another trial.—*Howard v. Gregory*, S. C. Ga., Jan. 13, 1888; 4 S. E. Rep. 881.

13. APPEAL —Jurisdiction—Costs.——Though a court by constitutional provision cannot hear and determine a case on bill of exceptions, it may enter a judgment for costs against the plaintiff.—*Pope v. Jones*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 860.

14. APPEAL — Motion — Exception. —— A judgment overruling a motion for a new trial, to which no exception was taken, will not be reviewed.—*Campbell v. Pittman*, S. C. Miss., Jan. 23, 1888; 3 South. Rep. 455.

15. APPEAL—New Trial — Stipulation.——The action of the district court in sustaining a motion for a new trial is not subject to review on appeal until a final judgment is rendered, but such action may be reviewed on appeal on stipulation entered into while the motion was pending, making the decision of the supreme court final.—*Johnson v. Parrotte*, S. Neb., Jan. 25, 1888; 36 N. W. Rep. 497.

16. APPEAL — New Trial — Weight of Evidence. ——A trial court cannot set aside a verdict and grant a new trial on the ground that the evidence does not support the verdict, when there is a decided preponderance of testimony to support it.—*Spurlock v. West*, S. C. Ga., Jan. 9, 1888; 4 S. W. Rep. 891.

17. APPEAL — Review. ——Upon appeal from the appellate court to the Supreme Court of Illinois, all questions arising from the record are reviewable.—*Ohio, etc. Co. v. Wachter*, S. C. Ill., Jan. 20, 1888; 15 N. E. Rep. 279.

18. APPEAL—Separate Rights. —— A filed a bill to set aside a deed of trust by B, making his preferred creditors and his children parties. The deed was sustained, and the children appealed: *Held*, that an appeal by the children would not bring the rights of A before the court.—*Rover v. Roanoke N. Bank*, S. C. App. Va., June 30, 1887; 4 S. E. Rep. 820.

19. APPEAL—Service of Bill of Exceptions.——Service of a bill of exceptions on a defendant, who is a member of a law firm who are attorneys of record in the case, and his acknowledgment thereof and waiver of further service, signed by him as an individual, and not as attorney, will not avail as evidence of service upon his codefendants.—*Anderson v. Fau*, S. C. Ga., Dec. 5, 1887; 4 S. E. Rep. 920.

20. APPEAL—Time of Taking.——In California, an appeal taken more than a year after the judgment will be dismissed. — *Shepherd v. Jones*, S. C. Cal., Oct. 28, 1887; 16 Pac. Rep. 711.

21. APPEAL—Verdict—Contradictions.——The special findings of a jury must be so contradictory, as to material facts and so inconsistent with the general verdict, as to render it impossible for the court to render an intelligent judgment, before such contradiction and inconsistency will justify a reversal. — *German I. Co. v. Smelker*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 735.

22. ARREST — Assisting Officer.—— A by-stander is, under Alabama law, criminally liable for refusing on demand made to assist an officer in making an arrest, and in so assisting is not criminally responsible, though the officer is a trespasser in arresting the wrong person. —*Watson v. State*, S. C. Ala., Jan. 10, 1888; 3 South. Rep. 441.

23. ASSIGNMENT — Corporation—Stockholders.——An assignment by a corporation for the benefit of its creditors without ratification by its stockholders is not *ultra vires*, and, under Alabama law, the assignee may sue the stockholders in equity on their unpaid stock.—*Chamberlain v. Bromberg*, S. C. Ala., Jan. 5, 1888; 3 South. Rep. 434.

24. ASSIGNMENT—Fraud—General Creditor.——An assignment for the benefit of creditors is not fraudulent, because it authorizes the assignee to sell for cash or on credit. A creditor may attack an assignment as fraudulent without first reducing his demand to a judgment.—*Meyer v. Black*, S. C. N. Mex., January Term, 1888; 16 Pac. Rep. 620.

25. ASSIGNMENT FOR CREDITORS—Consent of Assignee. ——A certificate by a notary public, that an assignee accepted before him the trust created in an assignment for the benefit of creditors, does not comply with Wisconsin law, and the assignment is invalid. — *Clark v. Lamoreux*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 393.

26. ASSUMPSIT —Courts—Pleading and Proof.——Under a declaration in *assumpsit* containing a special count on a promissory note and the general counts, a promissory note varying from the one pleaded is admissible under the general count with evidence that defendant admitted his indebtedness thereon.—*Hopkins v. Orr*, U. S. S. C., Feb. 6, 1888; 8 S. C. Rep. 590.

27. ATTACHMENT — Dissolution — Delivery. ——Upon dissolution of an attachment, an order must be entered to deliver the property attached forthwith to the defendant, and an order of delivery to defendant's assignee for the benefit of creditors cannot stand, under Wisconsin law. — *Morawitz v. Wolf*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 392.

28. ATTORNEY — Prosecuting —Compensation—Constitution. —— The act of 1887, providing for the payment by the State of the *per diem* of county solicitors, is void. Such salary must be paid by the county.—*State v. Barnes*, S. C. Fla., Feb. 1, 1888; 3 South. Rep. 433.

29. BANKS—Special Deposit—Passing Title.——An insolvent cashier of a bank, who was largely indebted, put some of his own securities in a package and placed it with similar packages left there for safe-keeping. He intended therewith to secure payment of drafts securing his indebtedness to the bank. He did not indorse the securities. The drafts were entered on the books as paid, and the item of the bonds of the bank was increased by the value of these securities. *Held*, that the title did not pass to the bank.—*Witters v. Sowles*, U. S. C. C. (Vt.), Jan. 14, 1888; 33 Fed. Rep. 542.

30. BILL OF LADING—Contract—Sight Draft.——Where a party agrees with another to pay the sight draft of a third person, drawn against a consignment to him of cattle and hogs, he is bound to pay such sight drafts upon receipt of the bill of lading.—*Commercial, etc. Co. v. Pfeifer*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 311.

31. BILLS AND NOTES—Accommodation—Agreement. ——An agreement between the drawer and the accommodation acceptor of a bill of exchange, that it shall be negotiated at a particular bank, cannot affect a *bona fide* holder thereof, ignorant of the agreement, who has taken it for a pre-existing debt.—*Frank v. Quast*, Ky. Ct App., Feb. 9, 1888; 6 S. W. Rep. 909.

32. BILLS AND NOTES—Action—Indorsement.——When A draws a draft on B, payable to himself or order, which B accepts, A has a statutory action thereon against B, though he has not indorsed it.—*Cooper v. Jones*, S. C. Ga., Jan. 26, 1888; 4 S. E. Rep. 916.

33. BILLS AND NOTES—Filling Blanks.——When the maker of a promissory note leaves blanks in it, he cannot object if the blanks are filled before the note reaches an innocent holder.—*Lowden v. Schohane Co. N. Bank*, S. C. Kan., Feb. 11, 1888; 16 Pac. Rep. 748.

34. BOUNDARIES—Government Survey—Shore Line.—— The locality of a shore line of a meandered river at the time of a government survey is a question of fact.—*Menasha, etc., Co. v. Lawson*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 412.

35. BRIDGES — Counties—Vote of Electors.——Upon petition of a town to the county board for aid in reconstructing across a meandered stream a bridge, authorized by law before 1874, the county may appropriate the necessary money without a vote of the electors.—*State*

v. Racine County, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 399.

36. BRIDGES—Height Above River-bed.—The bridge erected by the South Carolina railroad over the Congaree river becomes unlawful, if it is not forty-two feet above the bed of the river, though the bed is slowly rising.—*State v. South Carolina R. Co.*, S. C. S. Car., Feb. 1, 1888; 4 S. E. Rep. 796.

37. CARRIERS—Construction Train—Passengers.—The presumption that a person on a construction train on invitation of an employee is not lawfully there may be overcome by special circumstances implying the authority of such employee to grant such privilege. Such person assumes the ordinary risks of such train and track, but not the risks from the negligence of the company in not keeping its track in proper repair for its ordinary use.—*Rosenbaum v. St. Paul, etc. R. Co.*, S. C. Minn., Feb. 8, 1888; 36 N. W. Rep. 447.

38. CARRIERS—Limiting Liability.—A transportation cannot relieve itself from liability for loss of goods by a stipulation in the bill of lading that in case of loss the railroad shall be responsible, in whose custody the goods are at the time.—*Block v. Merchants' D. T. Co.*, S. C. Tenn., Feb. 19, 1888; 6 S. W. Rep. 881.

39. CARRIERS—Passengers—Negligence.—To each and every method of carrying passengers for hire must be applied the greatest skill, care and foresight to which they are in their nature susceptible. To run street cars so near the intersection of a switch with the main track that the cars on each cannot pass without injury to passengers is gross negligence.—*Topeka C. R. Co. v. Higgs*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 667.

40. CARRIERS—Pleading—Evidence—Negligence.—Where an action is brought against a carrier, charging negligence in the transportation of goods, it is error for the court to charge that if the jury find that the goods were damaged by being placed in unsuitable cars the defendant is liable, there being no allegation to that effect in the declaration.—*Central, etc. Co. v. Avaut*, S. C. Ga., Feb. 6, 1888; 5 S. E. Rep. 78.

41. CHARITABLE ASSOCIATIONS—Abandonment—Funds.—The funds of a relief association will not be ordered to be distributed among the members thereof, unless it clearly appears that the objects of the association have been abandoned.—*Roper v. Burke*, S. C. Ala., Jan. 6, 1888; 3 South. Rep. 439.

42. CHARITIES—Uncertainty in Bequest.—A bequest to the poor of a city, when there are no city paupers nor a poor fund, is void for uncertainty.—*In re Hoffen's Estate*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 407.

43. CHARITY—Corporation—Constitutional Law.—Where a fund has been bequeathed for educational or other charitable purposes to the State, and the State has committed its administration to one corporation, it is competent for the State to transfer its administration to another corporation.—*Wambersie v. Orange, etc. Co.*, S. C. App. Va., Feb. 2, 1888; 5 S. E. Rep. 25.

44. CHATTEL MORTGAGE—Affidavit—Firm.—When a chattel mortgage is made to a firm in its firm name, the affidavit of good faith, required by Montana laws, is insufficient, when made by one of the partners in his individual name without identifying him as one of the partners—*Baker v. Powers*, S. C. Mont., Jan. 13, 1888; 16 Pac. Rep. 589.

45. CHATTEL MORTGAGE—Affidavit—Partners.—When a chattel mortgage purports to be made to several persons described as members of a partnership, the affidavit of good faith, required by Montana laws, is insufficient, when made by only one of such persons.—*Butte H. Co. v. Sullivan*, S. C. Mont., Jan. 11, 1888; 16 Pac. Rep. 588.

46. CHATTEL MORTGAGE—Consideration—Creditors.—When a mortgage is for $1,500, but only $1,000 is paid at the time, but the remaining $500 is paid long before possession is taken by the mortgagee, the mortgage is valid. When the mortgagee takes possession of the chattels and sells them for their true value, and applies the residue of the money, after paying his debt, in paying the debts of the mortgagor, such sale is valid against existing creditors.—*McCord, etc. Co. v. Burton*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 664.

47. CHATTEL MORTGAGE—Execution—Replevin.—When the mortgage debt falls due while the mortgaged chattels are in possession of an officer under an execution against the mortgagor, the mortgagee, upon refusal to surrender, may replevy the chattels from the officer without first demanding the mortgage debt from the mortgagor or the officer, and it is no defense to the officer that another holds a prior unsatisfied mortgage on the property.—*Rankine v. Greer*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 680.

48. CHATTEL MORTGAGE—Judgment—Lien.—On a sale under a chattel mortgage, given for the purchase money, the mortgagee is entitled to the proceeds against a prior judgment creditor of the mortgagor.—*Rasin v. Swann*, S. C. Ga., Jan. 13, 1888; 4 S. E. Rep. 882.

49. CHATTEL MORTGAGE—Recording—Priority.—A recorded chattel mortgage of personal property has priority over an earlier unrecorded mortgage unknown to the second mortgagee.—*Kelly v. Shepherd*, S. C. Ga., Jan. 11, 1888; 4 S. E. Rep. 880.

50. CHATTEL MORTGAGE—Sale—Junior Mortgage.—A mortgaged a horse to B and subsequently mortgaged it to C. A and B sold it for its full value to D and applied the money on the debt due to B: *Held*, that the interest of A, B and C in the horse was extinguished by the sale.—*Faeth v. Leary*, S. C. Neb., Jan. 25, 1888; 36 N. W. Rep. 513.

51. CHATTEL MORTGAGE—Sale—Waiver.—When a mortgagee tells the purchaser that he assented to the sale of the mortgaged property by the mortgagor, he cannot, after the sale, replevy the property.—*Littlejohn v. Pearson*, S. C. Neb., Jan. 18, 1888; 36 N. W. Rep. 477.

52. CHATTEL MORTGAGE—Stock of Goods.—Under Montana laws, a mortgage of a stock of goods, providing that the mortgagor may sell them in the usual course of trade, is void.—*Leopold v. Silverman*, S. C. Mont., Jan. 7, 1888; 16 Pac. Rep. 580.

53. CHATTEL MORTGAGE—Private Sale—Creditors.—When a mortgagee sells the mortgaged goods, which are subject to the claims of other creditors, at private sale, he must account for the value of the goods as against such creditors.—*Laninger v. Herron*, S. C. Neb., Jan. 18, 1888; 36 N. W. Rep. 481.

54. CONDITIONAL SALE—Chattel Mortgage—Extension.—Where chattels have been sold upon condition, and an extension of payment granted, such extension is a valid consideration for a mortgage of the chattels.—*Sinker v. Green*, S. C. Ind., Feb. 8, 1888; 15 N. E. Rep. 266.

55. CONSTITUTIONAL LAW—Bridge Taxes.—Laws Wisconsin 1885, ch. 187, relative to dividing the taxes for bridges in a town, is constitutional.—*State v. Sauk County*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 396.

56. CONSTITUTIONAL LAW—Contempt—Imprisonment for Debt.—An executor who has ignored an order to pay into court the amount found to be due by him in his fiduciary capacity, is guilty of a contempt of court, but cannot be committed to jail for his refusal to make such payments, as imprisonment under such an order would be imprisonment for debt and a violation of the constitution.—*Golson v. Holman*, S. C. S. Car., Feb. 1, 1888; 4 S. E. Rep. 811.

57. CONSTITUTIONAL LAW—Statute—Election.—One whose interests are not affected by a statute has no right to bring into question its constitutionality. Construction of Florida election laws and the duties of various officers under those laws.—*Franklin Co. v. State ex rel.*, S. C. Fla., Feb. 15, 1888; 3 South. Rep. 471.

58. CONSTITUTIONAL LAW—Titles—Subjects.—Act Georgia February 24, 1874, to consolidate the acts incorporating the city of Dalton, is unconstitutional as to title, subjects included, and matters not germane.—*Brown v. State*, S. C. Ga., Dec. 16, 1887; 4 S. E. Rep. 861.

59. CONTRACT—Creditor's Bill—Judgment.—The validity of a contract must be tested in an action

brought upon it, and not when the judgment rendered upon it is brought before the court in a creditor's bill.—*Decker v. Decker*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 307.

60. CONTRACT—Executory Contract—Sale.——A contract by which a party agrees to deliver a certain quantity of iron whenever demanded, is, notwithstanding the fact of payment, an executory contract, although the quantity in question was not segregated from the bulk of the parties iron.—*Coplay, etc. Co. v. Pope*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 335.

61. CONTRACT—Legal Contract — Usury.——Where a contract is made in which one of the parties agrees to lend to the other a sum of money at usurious interest, and afterwards refuses to do so, and in consequent of such refusal the would-be borrower suffers a loss, he has no cause of action against the lender for a breach of the illegal contract.—*Brown v. Baer*, S. C. Ga., Feb. 6, 1888; 5 S. E. Rep. 72.

62. CONTRACT—Signing by Third Party.——When a third party not mentioned in a contract signs it after the principal without any descriptive words, he can be held as a surety.—*Thompson v. Goble*, S. C. Oreg., Jan. 23, 1888; 16 Pac. Rep. 713.

63. CONTRACTS—Writing — Parol Changes.——A provision in a contract, that no new work shall be considered as extra, unless expressly contracted for in writing before its commencement, may be waived and changes may be made by parol.—*Erskine v. Johnson*, S. C. Neb., Jan. 25, 1888; 36 N. W. Rep. 510.

64. COPYRIGHT—Photograph—Possession of Copy.——Having control as business manager of sheets of a photograph, which has been copyrighted, does not make such person liable, under Rev. Stat. United States, § 4965.—*Thornton v. Schreiber*, U. S. S. C., Feb. 13, 1888; 8 S. C. Rep. 618.

65. CORPORATIONS—Foreign — Doing Business.——A foreign corporation can sue its agent for failure to account for money realized from the sale of sewing machines, without having complied with the law regulating foreign corporations doing business in the State, the law in this respect being unconstitutional.—*Singer M. Co. v. Hardee*, S. C. N. Mex., Feb. 10, 1888; 16 Pac. Rep. 605.

66. CORPORATIONS—Stock—Lien.——Under Wisconsin laws, a corporation has a lien on its stock for any unpaid balance thereon, though it transfers the stock to a vendee.—*Herdegen v. Cotzhausen*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 385.

67. COUNTY—Suit — Defaulting Treasurer.——An action will lie by a county against the county treasurer for all funds, county, State, school, city, etc., for which he is in default.—*Thorne v. Adams Co.*, S. C. Neb., Feb. 1, 1888; 36 N. W. Rep. 515.

68. COURTS — Vacation — Chancery. ——A court of chancery is always open and can exercise its powers over trust estates in vacation to protect the interests of a *cestui que trust*.—*O'Bear v. Little*, S. C. Ga., Jan. 26, 1888; 4 S. E. Rep. 914.

69. CREDITOR'S BILL—Personal Property — Findings. ——In an action by a judgment creditor to set aside a prior conveyance by the debtor to his wife, the court found that the wife held personal property from her husband, which was subject to the payment of plaintiff's judgment and sufficient therefor, without specifying the property: *Held*, that no motion for a new trial having been filed, the decree that she pay the debt out of such property would not be disturbed.—*Stoll v. Gregg*, S. C. Neb., Jan. 25, 1888; 36 N. W. Rep. 495.

70. CRIMINAL LAW—Contract for Farm Labor.——A justice of the peace has no jurisdiction of the offense of violating a written contract for farm labor.—*State v. Madden*, S. C. S. Car., Feb. 1, 1888; 4 S. E. Rep. 810.

71. CRIMINAL LAW—Cruelty to Animals—Trespassing. ——When a party after vainly trying to drive away hogs trespassing on his land, cannot be held for cruelty to animals, if he kills them to protect his crops, and not from a spirit of cruelty.—*Stephens v. State*, S. C. Miss., Jan. 30, 1888; 3 South. Rep. 458.

72. CRIMINAL LAW—Disagreement—Discharge of Jury. ——A court may discharge a jury in a criminal case, if it is satisfied that they cannot agree, and declare a mistrial, even though they have not deliberated more than an hour and a half.—*Lovett v. State*, S. C. Ga., Jan. 25, 1888; 4 S. E. Rep. 912.

73. CRIMINAL LAW—Dying Declarations.——In a trial for murder, it appeared that deceased died from the effect of bruises in the abdomen. Five days before he died, he said he was going to die; that a number of men took him into the woods and whipped him with a buggy-trace, and that the defendant was one of them: *Held*, that the statements were admissible as dying declarations.—*Bryant v. State*, S. C. Ga., Nov. 25, 1887; 4 S. E. Rep. 853.

74. CRIMINAL LAW — Embezzlement — City Treasurer. ——Under Minnesota law, a city treasurer who improperly neglects or refuses to pay over money received by him officially, is guilty of embezzlement.—*State v. Czizek*, S. C. Minn., Feb. 10, 1888; 36 N. W. Rep. 457.

75. CRIMINAL LAW—Homicide — Conspiracy.——In a trial for murder, where there is no evidence of a conspiracy, defendant cannot, to show a conspiracy, offer evidence, that after the first shot by him one with deceased struck him.—*Simmons v. State*, S. C. Ga., Jan. 20, 1888; 4 S. E. Rep. 894.

76. CRIMINAL LAW—Instruction—Homicide.——Where defendant quarrelled with deceased, and after going away returned and killed him, an instruction, that in order to reduce the killing to manslaughter the jury must consider whether the killing was done in consequence of what occurred at the first or at the last visit, is correct.—*State v. Jacobs*, S. C. S. Car., Feb. 1, 1888; 4 S. E. Rep. 799.

77. CRIMINAL LAW — Larceny—Instructions.——In a case of larceny, it is error to refuse to instruct, that recent possession of the stolen property is only a circumstance tending to show guilt; that the jury are to decide whether the possession is recent, and that conviction cannot be had on the testimony of an accomplice, unless corroborated.—*Boyd v. State*, Tex. Ct. App., Jan. 28, 1888; 6 S. W. Rep. 853.

78. CRIMINAL LAW—Larceny—Instructions.——When the defendant only assisted in branding the stolen cattle, it is error to refuse to instruct, that he is entitled to an acquittal if he only so assisted without any previous agreement or participation in the offense charged.—*Willis v. State*, Tex. Ct. App., Feb. 3, 1888; 6 S. W. Rep. 857.

79. CRIMINAL LAW—Larceny—Instructions.——When, in a larceny case, it appears that the defendant's connection with the property was after it was stolen, and what he did was at the request and for the benefit of others, it is error not to instruct, that defendant must have taken the property with intent to appropriate it to his own use.—*Willis v. State*, Tex. Ct. App., Jan. 28, 1888; 6 S. W. Rep. 856.

80. CRIMINAL LAW—Larceny—Statutory Offense.—— An indictment alleging corn to have been stolen "as being in the field," is fatally defective, under the special statute, but a general verdict of guilty will sustain a conviction of simple larceny.—*State v. Nelson*, S. C. S. Car., Feb. 1, 1888; 4 S. E. Rep. 792.

81. CRIMINAL LAW—Larceny—Venue.——When property is stolen in one county and carried into another, the jurisdiction is in either county.—*Kidd v. State*, S. C. Ala., Jan. 9, 1888; 3 South. Rep. 442.

82. CRIMINAL LAW—Misdemeanors — Accessories.—— In Georgia, there are no accessories before the fact in misdemeanors, persons who would be such in felonies are principals in misdemeanor cases.—*Kinnebrew v. State*, S. C. Ga., Oct, 26, 1887; 5 S. E. Rep. 56.

83. CRIMINAL LAW—Name—Idem Sonans.——When it appears that the licensee to sell liquors was Bert

Samrud, while the defendant's name is Bert Sannerud, the variance is immaterial in a criminal case.—*State v. Sannerud*, S. C. Minn., Feb. 14, 1888; 36 N. W. Rep. 447.

84. CRIMINAL LAW—New Trial—Balanced Testimony.——When there is a conviction for selling liquor without a license, a motion for a new trial, because the verdict is contrary to the evidence, may be properly denied, though but one witness for the State and one for the defense testified.—*Neill v. State*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 871.

85. CRIMINAL LAW — Officer — Embezzlement.——A clerk in the office of a collector of customs is not liable to indictment as a public officer for the unlawful conversion to his own use of the public money.—*U. S. v. Smith*, U. S. S. C., Feb. 6, 1888; 8S. C. Rep. 595.

86 CRIMINAL LAW—Perjury.——Gen. St. S. C., § 2534, does not require that the false swearing shall be material to the issue in a judicial proceeding.—*State v. Byrd*, S. C. S. Car., Feb. 1, 1888; 4 S. E. Rep. 793.

87. CRIMINAL PRACTICE — Character—Witnesses.——When, in a criminal case, the defendant introduces evidence of his good character, the prosecution may introduce witnesses in rebuttal, though their names are not indorsed on the information.—*State v. Huckins*, S. C. Neb., Feb. 8, 1888; 36 N. W. Rep. 527.

88 CRIMINAL PRACTICE—Conduct of Trial.——An adjournment of court for ten minutes to allow the State to procure the attendance of a witness during a criminal trial, is not reversible error.—*Pearce v. State*, S. C. Ga., March 10, 1887; 4 S. E. Rep. 849.

89 CRIMINAL PRACTICE — Indictment — Pleading.——Where an indictment contains two counts, the first sufficiently charging the crime of forgery, the second insufficiently charging the crime of uttering a forgered instrument, a demurrer to the whole indictment cannot be sustained.—*Gibson v. State*, S. C. Ga., Feb. 6, 1888; 5 S. E. Rep. 76.

90. CRIMINAL PRACTICE — Instruction—Charging Jury on Matters of Fact—Constitutional Law.——Under the constitution of South Carolina, a judge cannot charge the jury as to matters of fact, and saying to them that the prisoner testifying in his own behalf was swearing for his life and commenting upon the disparity of physical strength of the parties engaged in the fight, and other like language is held to be a violation of that provision of the constitution.—*State v. Addy*, S. C. S. Car., Feb. 1, 1888; 14 S. E. Rep. 814.

91 CUSTOM — Usage — Evidence — Insurance.——Circumstances stated under which it was held proper to admit evidence of the custom of a warehouseman to insure cotton stored with him for full value, and when only to cover advances.—*Hardeman v. English*, S. C. Ga., Feb. 6, 1888; 5 S. E. Rep. 70.

92. DAMAGES—Measure — Carriers.——When, in exaggerated and apparently stale claims against a carrier for injury to a passenger, the injury suffered is slight or nominal, the damages allowed should be merely just and reasonable.—*Maher v. Louisville, etc. R. R. Co.*, S. C. La., Feb. 13, 1888; 3 South. Rep. 462.

93. DEATH BY WRONGFUL ACT—Action.——A husband has neither, by common or statute law, a right of action for damages for the wrongful killing of his wife, if her death was immediate.—*Womack v. Central Ice Co.*, S. C. Ga., Feb. 1, 1888; 5 S. E. Rep. 63.

94. DEDICATION—Adverse User.——When the dedication and acceptance of a highway are proved, no lapse of time, adverse possession nor user can convey title against the public.—*Yates v. Warrenton*, S. C. App. Va., Jan. 19, 1888; 4 S. E. Rep. 818.

95. DEDICATION—Special Purposes — Alteration.——Where a square within the limits of a city, dedicated to the public, has been used since 1743, prior to the incorporation of the city, for a court house and for hitching posts and for standing room for the horses and wagons of farmers, an injunction will issue to prevent the city from removing such hitching posts and otherwise altering a part of the square.—*Frederick Co. v. City of Winchester*, S. C. App. Va., Feb. 2, 1888; 4 S. E. Rep. 844.

96. DEDICATION—Streets—Easement—Limitation.——When A conveys property to B, bounded by a street which he agrees to open, but which is in his inclosure, B's right to such easement is barred in five years from the registration of his deed, and the city cannot claim the street, not having recognized or accepted the dedication.—*City of Galveston v. Williams*, S. C. Tex., Jan. 6, 1888; 6 S. W. Rep. 860.

97. DEED — Acknowledgment — Name. —— A deed signed by Geo. H. Case, but certified in the acknowledgment as the act of Geo. H. Crane, is not competent evidence without further proof as the act of Geo. H. Case.—*Heil v. Redden*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 743.

98. DEED — Covenants — Signature.——A deed purporting to be the act of A does not show that the title was in any other, because A adds to his signature agent of B.—*Fisher v. Cid C. M. Co.*, S. C. N. Car., April 4, 1887; 4 S. E. Rep. 772.

99. DEED—Executor—Will—Power.——Where, under a will, the executor has power to sell real estate, and in doing so conveys it by deed executed by him individually, and not containing any reference to the will or the power conferred by it, or to his office as executor, such deed is nevertheless valid and passes the title.—*Terry v. Rodahan*, S. C. Ga., Jan. 9, 1888; 5 S. E. Rep. 38.

100. DEED—Grantees—Heirs of Living Person.——A deed for love and affection to the heirs of A, who then had children, conveys the land to such children, and after born children take no interest.—*Tharp v. Yarbrough*, S. C. Ga., Jan. 26, 1888; 4 S. E. Rep, 915.

101. DEEDS — Impeachment — Evidence.——When a trust deed offered by plaintiff is assailed for fraud, he can prove the truth as to its consideration regardless of the recitals of the deed.—*Wimberly v. Wortham*, S. C. Miss., Jan. 23, 1888; 3 South. Rep. 459.

102. DEEDS — Recording — Lien. —— Under code Georgia, § 267, a mortgage must be actually recorded to make it a lien from its date.—*Benson v. Callaway*, S. C. Ga., Nov. 22, 1887; 4 S. E. Rep. 851.

103. DEED—Reserving Title till Grantor's Death.——A, for services rendered by B, conveyed land to B, reserving the title to himself till his death: *Held*, that the deed conveyed a present interest in the land, subject to a life estate in the grantor.—*White v. Hopkins*, S. C. Ga., Nov. 29, 1887; 4 S. E. Rep. 863.

104. DESCENT AND DISTRIBUTION — Half Blood—Statute.——Construction of Indiana statutes relative to descents and distributions. When relatives of the half blood inherit equally with those of the whole blood, and when the inheritance is governed by the relation of the ancestor from whom the estate is derived.—*Pond v. Irwin*, S. C. Ind., Feb. 7, 1888; 15 N. E. Rep. 272.

105. DURESS.——Circumstances stated under which a conveyance by a father to secure the creditors of his son was held to be extorted by undue influence and duress, and was therefore void.—*Fisher v. Bishop*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 331.

106. DURESS—Execution of Deed.——A bought land on execution against B, and then went with the sheriff to C and threatened to turn him out of possession unless he executed a deed for the land to A. C made the deed, the only consideration therefor being that C should have the growing crop: *Held*, that the deed conveyed no title as against C.—*Findley v. Hulsey*, S. C. Ga., Dec. 3, 1887; 4 S. E. Rep. 902.

107. DIVORCE —Abandonment — Appeal.——In a divorce case the question whether the husband deserted the wife, or the wife deserted the husband, is purely a question of fact for the trial court, and will not be reviewed upon appeal.—*Cross v. Cross*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 333.

108. DIVORCE — Adultery —Condonation.——Accusations of adultery by a husband against his wife are, in Oregon, grounds for a divorce. Condonation of an offense, which is ground for divorce, is nullified by a

repetition of the offense.—*Eggarth v. Eggarth*, S. C. Oreg., Jan. 19, 1888; 16 Pac. Rep. 650.

109. DIVORCE—Custody of Children.——When the wife is a proper person and has sufficient means, and it is for the interest of the child, her child should be awarded to her upon the granting of a divorce to her.—*Lyle v. Lyle*, S. C. Tenn., Feb. 18, 1888; 6 S. W. Rep. 878.

110. EJECTMENT—Title—Estopped to Deny.——When one enters upon land by a lease from a mortgagee in possession, or purchases from him the mortgage, he is estopped to deny the rightful possession of the mortgagee. If he enters under lease or contract of sale, he cannot set up the statute of limitations till he surrenders the premises or gives notice that he will not hold in subordination to the title under which he entered.—*Alderson v. Marshall*, S. C. Mont., Jan. 10, 1888; 16 Pac. Rep. 576.

111. EMINENT DOMAIN—Foreign Corporation.——No foreign corporation can exercise the right of eminent domain in this State.—*Trester v. Missouri P. R. R.*, S. C. Neb., Jan. 25, 1888; 36 N. W. Rep. 502.

112. EMINENT DOMAIN—Injunction.——Where, under color of eminent domain, a railroad company enters upon land without the leave of the owner, without taking the prescribed legal steps, and without making compensation, such entry is unlawful and may be enjoined.—*Midland, etc. Co. v. Smith*, S. C. Ind., Jan. 27, 1888; 15 N. E. Rep. 256.

113. EMINENT DOMAIN—Value—Opinion.——When the land appropriated has no market value, witnesses, who are competent to testify to the value of property, may give their opinions of the value of the land taken.—*St. Louis, etc. R. R. v. Chapman*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 695.

114. EQUITY—Cancelling Deed—Consideration.——When A was induced to sell land by the false and fraudulent representations of the purchaser, the deed will not be set aside, if he received all that the land was reasonably worth.—*Grindrod v. Wolf*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 691.

115. EQUITY—Cancelling Deeds—Fraud.——Whoever makes a false statement to induce another to contract with him and thereby succeeds, is guilty of fraud that vacates the contract.—*Curtis v. Stilson*, S. C, Kan., Jan. 7, 1888; 16 Pac. Rep. 678.

116. ESTOPPEL—Lost Instrument—Establishment.——One, who was a party to a proceeding to establish a copy of a lost note, is estopped from filing a plea of *non est factum* when sued on the established note.—*Vaughn v. Drewry*, S. C. Ga., Jan. 11, 1888; 4 S. E. Rep. 879.

117. EQUITY—Practice—Demurrer—Executor—Injunction.——If a demurrer be filed and a preliminary injunction be granted, the granting of it does not decide the demurrer, nor preclude the defendant from moving to dismiss the bill. An executor who is personally interested in the estate in his hands as creditor, or otherwise, is personally a party to a bill which he may file as executor, and as such is bound by the decree.—*Jenkins v. Nolan*, S. C. Ga., Jan. 11, 1888; 5 S. E. Rep. 34.

118. EQUITY—Set-off—Attachment.——Under Mississippi law, equity can entertain a suit to set-off against a judgment on an attachment bond the debt sued for in the attachment case.—*Posey v. Maddox*, S. C. Miss., Jan. 23, 1888; 3 South. Rep. 460.

119. ERROR—Writ of Error—New Trial.—— To entitle a party to a new trial by means of a writ of error from the appellate court, it must appear by the record that a new trial was asked for and refused in the trial court.—*Harrington v. Latta*, S. C. Neb., Jan. 6, 1888; 36 N. W. Rep. 364.

120. ERROR—Writ of Error—Statute—Costs.——In criminal cases a writ of error cannot be allowed except in the manner prescribed by the statute. No statute imposes the payment of cost in such cases upon the State.—*State ex rel. v. Newman*, S. C. Fla., Feb. 9, 1888; 3 South. Rep. 467.

121. ESTOPPEL—Adverse Possession.——Where the owner of land has permitted a railroad company to build its road over its land, not requiring or receiving compensation therefor, and the company has used the right of way and tract for twenty years, the owner of the land, and those claiming under him, cannot maintain ejectment for the land.—*Evansville, etc. Co. v. Nye*, S. C. Ind., Jan. 28, 1888; 15 N. E. Rep. 261.

122. ESTOPPEL—Estoppel In Pais—Representations.——Where one person represents to another that a third person is the owner of certain named property, and thereupon the party to whom the representation is made gives credit to that third person, the party making the representation is estopped, and cannot maintain replevin for that property.—*Towne v. Sparks*, S. C. Neb., Jan. 5, 1888; 36 N. W. Rep. 375.

123. EVIDENCE—Copy—Seal—Stipulation.——Where, by stipulation of counsel, copies of deeds may be read in evidence without proof of the loss of the original: *Held*, that a copy of a deed by a corporation, to which no seal is attached, may be read in evidence, the recitals of the deed showing that the seal was attached to the original.—*Colvin v. Republican, etc. Ass'n*, S. C. Neb., Jan. 5, 1888; 36 N. W. Rep. 361.

124. EVIDENCE—Declarations—Res Gestæ.——When the meat alleged to have been stolen was in a room in a sack, where the defendant had a sack with meat in it, what he said to a neighbor soon after arriving at home, tending to show that he had brought away the wrong sack by mistake, is admissible in his behalf.—*Lovett v. State*, S. C. Ga., Jan. 25, 1888; 4 S. E. Rep. 912.

125. EVIDENCE—Municipal Corporations—Negligence.—— In an action against a city for negligence, it is not competent to prove that after the disaster to the plaintiff, the excavation into which he had fallen was fenced in by citizens to protect the public.—*Corcoran v. Village of Peekskill*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 309.

126. EVIDENCE—Offer of Compromise.——A letter from a purchaser to a seller, requesting the latter to take back a portion of the goods, and another offering to pay half in full of the demand, there being no question of liability, are not propositions looking to a compromise, proof of which are forbidden by statute, though the writer may term his offer such.—*Cooper v. Jones*, S. C. Ga., Jan. 26, 1888; 4 S. E. Rep. 916.

127. EVIDENCE—Parol—Written Contract.——Parol evidence that a railroad should be constructed through plaintiff's land in a particular way, is not admissible to vary a subsequent written agreement to give a thirty foot right of way, if the survey ran through the land.—*Burch v. Augusta, etc. R. R.*, S. C. Ga., Nov. 12, 1887; 4 S. E. Rep. 850.

128. EVIDENCE—Parol to Vary Writing.——When the writings show the full and complete contract, it is error to allow parol evidence of an agreement to pay other and further consideration.—*Looney v. Rankin*. S. C. Oreg., Jan. 19, 1888; 16 Pac. Rep. 660.

129. EVIDENCE—Promissory Note.——In an action on a promissory note, a memorandum book showing payments on the note, is not admissible in evidence.—*Wells v. Ayres*, S. C. App. Va., Jan. 19, 1888; 5 S. E. Rep. 21.

130. EVIDENCE—Secondary—Lost Records.——Testimony of a clerk in the land office, that he has seen certain papers on file there and shortly afterwards they were missing, is not sufficient to admit them to be proved by parol evidence.—*Rhodus v. Sansum*, S. C. Tex., Dec. 6, 1887; 6 S. W. Rep. 849.

131. EXECUTION—Intervention—Different Rights.——When chattels are sold under a mortgage given by A, a mortgagee in a mortgage given by B on the same chattels, cannot intervene concerning the disposition of the proceeds.—*Bums v. Long*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 877.

132. EXECUTORS—Claims—Priority of Payment.——Two judgments obtained against an executor upon claims of equal dignity in the distribution of the estate have no priority over each other, and money realized

on an execution on one of them must be divided *pro rata* between the two.—*Carter v. Penn*, S. C. Ga., Jan. 20, 1888; 4 S. E. Rep. 896.

133. EXECUTORS—Collecting Accounts—Liability.——A subsequent administrator is not liable for any notes or accounts returned in the inventory of a prior administrator, unless it is shown that he could have collected them.—*Adkins v. Hutchings*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 887.

134. EXECUTORS—Foreign — Ejectment.——A foreign executor, without taking out letters testamentary in Mississippi, cannot there bring an action of ejectment.—*Sims v. Walden*, S. C. Miss., Jan. 30, 1888; 3 South. Rep. 457.

135. EXECUTORS —Settlements — Equity.——A court of equity will not interfere with the proceedings of probate courts in settling estates to correct mere errors of irregularities, unless they are sufficiently gross to raise the presumption of fraud.—*Jacoway v. Dyer*, S. C. Ark., Jan. 28, 1888; 6 S. W. Rep. 902.

136. EXECUTORS — Administrators—Sale—Purchase by Administrator.——Where an administrator, with the will annexed, sells land belonging to the estate, and before the purchase money is paid secures from the purchaser a deed of the land to himself, the transaction is void, and the title remains in the estate.—*Caldwell v. Caldwell*, S. C. Ohio, Jan. 10, 1888; 15 N. E. Rep. 297.

137. EXTRADITION—Habeas Corpus—Indictment.——On *habeas corpus* in a case of extradition, the court having the papers before it on which the govenor issued his warrant will consider their sufficiency, but where the indictment shows an offense committed, its sufficiency as a pleading will not be considered.—*State v. O'Connor*, S. C. Minn., Feb. 23, 1888; 36 N. W. Rep. 462.

138. FEDERAL QUESTION — Error — Writ of.—— The right of review of the decisions of State courts, under Rev. Stat. U. S., § 709, depends upon the questions involved, and not upon the citizenship of the parties.—*French v. Hopkins*, U. S. S. C., Feb. 6, 1888; 8 S. C. Rep. 589.

139. FIXTURES—Personalty—Parol Agreement—Statute of Frauds.——Circumstances stated under which, by virtue of a parol agreement, fixtures attached to the freehold may become personalty, and as such, be removed from the premises.—— *Tyson v. Post*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 316.

140. FORCIBLE DETAINER—Refusal to Vacate.——It is sufficient to maintain an action for forcible detainer that the party in possession refuses to vacate on lawful notice, which notice may be signed by an agent.—*Post v. Bohner*, S. C. Neb., Jan. 25, 1888; 36 N. W. Rep. 508.

141. FRAUDS—Statute of—Possession—Tenants in Common—Married Woman.——Where a tenant in common buys out the interest of his co-tenant, takes possession of the land and makes valuable improvements, the contract, although parol, is not within the statute of frauds. A married woman cannot become security for another on replevin bail.—*Peck v. Williams*, S. C. Ind., Feb. 7, 1888; 15 N. E. Rep. 270.

142. FRAUDULENT CONVEYANCES—Husband and Wife. ——A owned three-fourths interest in a farm, his wife and her sister owning the rest. They exchanged this for one of about three-fourths of its value, the husband receiving the difference in money and the farm being conveyed to the others. The husband testified that he was still indebted to the sisters. *Held*, that the deed was not fraudulent as to a judgment creditor of the husband.—*McFarland v. Elliott*, S. C. Iowa, March 5, 1888; 36 N. W. Rep. 418.

143. FRAUDULENT CONVEYANCES—Knowledge of Purchaser.——To avoid a sale as a fraud on creditors, the purchaser must know of the fraudulent intent of the seller, or know such facts as should put him on inquiry.—*Bollman v. Lucas*, S. C. Neb., Jan. 6, 1888; 36 N. W. Rep. 465.

144. FRAUDULENT CONVEYANCES—Setting Aside.—— A judgment creditor can sue to set aside a fraudulent conveyance by his debtor, and the return of an execution unsatisfied is not necessary, when the debtor is wholly insolvent.—*Taylor v. Dunlap, etc. Co.*, S. C. Kan. Feb. 11, 1888; 16 Pac. Rep. 751.

145. GAMING—Money Borrowed.——After losing money at gambling the party borrowed $400 from the keeper of the house, giving his note thefefor: *Held*, that the loan was not a gambling debt.—*Roberts v. Blair*, S. C. Colo., Jan. 27, 1888; 16 Pac. Rep. 717.

146. GARNISHMENT—Exemption—Certiorari.——Where, upon a garnishment in a justice's court, the debtor claims the property as exempt from execution and his claim is sustained by the justice and by a jury, he is entitled to immediate and unconditional possession; and if the judgment is reversed upon *certiorari* the plaintiff can effect nothing, unless the property can be found.—*Seaman's Ordinary v. King*, S. C. Ga., Jan. 13, 1888; 5 S. E. Rep. 53.

147. GUARDIAN—Bond—Clerk of the Court.——It is the duty, in North Carolina, of clerks of the superior court to appoint guardians and take sufficient bonds, and the clerks are liable for failure to discharge their duty.—*Topping v. Windley*, S. C. N. Car., Feb. 20, 1888; 5 S. E. Rep. 14.

148. GUARDIAN AND WARD—Extra Services—Burden of Proof.——When a guardian claims an allowance for extra services and for attorney's fees, the burden is on him to prove that they were necessary.—*Stanley v. Dishough*, S. C. Ark., Jan. 21, 1888; 6 S. W. Rep. 896.

149. GUARDIAN AND WARD—Guardian Ad Litem—Judicial Sale.——When a guardian applies to a court for an order to sell the land of his ward, a guardian *ad litem* need not be appointed, but the sale of the land, if conformable to the statute, will be valid.—*Prime v. Mapp*, S. C. Ga., Jan. 30, 1888; 5 S. E. Rep. 66.

150. GUARDIAN AND WARD — Judicial Sale — Surety—Statute.——Where a court orders a judicial sale of a ward's land and a guardian gives a bond with one surety only instead of two, as required by statute, and the land is sold to a purchaser, who had notice that there was but one surety on the bond: *Held*, that the purchaser took a good title, notwithstanding his notice of the irregularity.—*Marquis v. Davis*, S. C. Ind., Jan. 26, 1888; 15 N. E. Rep. 251.

151. HIGHWAY — Assessment —Statute.——Under the laws of Illinois, no assessment of taxes for bridges or highways shall be made by county commissioners, except for the year in which such assessment is made.—*Ohio, etc. Co. v. People ex rel.*, S. C. Ill., Jan. 20, 1888; 15 N. E. Rep. 276.

152. HIGHWAY—Bridges—Mandamus.——A *mandamus* will not be granted to compel a county to rebuild a bridge which has been destroyed and which is not essential to the enjoyment of the highway of which it is a part.—*Board, etc. v. State ex rel.*, S. C. Ind., Jan. 27, 1888; 15 N. E. Rep. 258.

153. HIGHWAYS — Establishment — Jurisdiction. —— Under the laws of 1881, the county commissioners had no jurisdiction to open a new public road till the proper notice was given, and if the notice given failed to fix a time for the hearing of objections, the board acquired no jurisdiction in the absence of the parties to be affected thereby.—*Beatly v. Beethe*, S. C. Neb., Jan. 25, 1888; 36 N. W. Rep. 494.

154. HOMESTEAD — City Property—Grocery.——Certain real estate in a city, owned by a man and occupied as a residence by himself and family, is exempt as his homestead, though the wife carries on a grocery on the first floor of the building and occupies the cellar for her business.—*Rush v. Gordon*, S. C. Kan., Feb. 11, 1888; 16 Pac. Rep. 700.

155. HUSBAND AND WIFE—Coyveyance—Acknowledgment.——Under act Illinois, March 27, 1869, a conveyance of the wife's land, executed by husband and wife, but not acknowledged by her, passes her title, subject only to homestead rights, which are governed by a different statute.—*Knight v. Paxton*, U. S. S. C., Feb. 6, 1888; 8 S. C. Rep. 592.

156. HUSBAND AND WIFE—Conveyance Between—Consideration.——A mortgage of land by the wife to her husband, professing to be given for the purchase money, may be shown to be without consideration and intended merely to protect his interest in such land after his death.—*Grindrod v. Wolf*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 691.

157. HUSBAND AND WIFE — Deed — Recording.——A husband and wife duly made and delivered to B a deed, which was lost: *Held*, that, under Virginia law, since the deed was not recorded, it conveyed no title from the wife.—*Rorer v. Roanoke N. Bank*, S. C. App. Va., June 30, 1887; 4 S. E. Rep. 820.

158. INJUNCTION — Back Water from Dam. —— If it clearly appears that plaintiff's mill-wheels are impeded by back water from defendant's dam erected below, plaintiff is entitled to an abatement of the nuisance and to an injunction.—*Stumbo v. Seeley*, S. C. Neb., Jan. 18, 1888; 36 N. W. Rep. 487.

159. INJUNCTION —Bond—Damages.——Where plaintiff asked an injunction to restrain defendant from cutting and carrying off timber and defendant answered claiming title in another person and a lease from him: *Held*, that an injunction will not be granted if defendant can file a sufficient bond to answer plaintiff in damages.—*Lewis v. Lumber Co.*, S. C. N. Car., Feb. 21, 1888; 5 S. E. Rep. 19.

160. INJUNCTION — Execution—Fraud—Demurrer.—— A bill praying an injunction to stop a sale by the sheriff under an execution founded on a mortgage, upon the ground of fraud, preventing the plaintiff from making a legal defense in the action upon which the execution was founded, is properly dismissed on demurrer, if the bill does not show all the facts relative to the alleged fraud.—*McCook v. Bernd*, S. C. Ga., Feb. 6, 1888; 5 S. E. Rep. 75.

161. INSOLVENCY — Preference—Limitation.——When a petition of insolvency was filed within three months after a mortgage was made, but was left to be acted on when requested, and was first acted on two months thereafter at the instance of another creditor, such mortgage cannot be thereby avoided, under Vermont law.—*Willers v. Sowles*, U. S. C. C. (Vt.), Jan. 14, 1888; 33 Fed. Rep. 540.

162. INSURANCE — Misstatement—Materiality.——A applied for $1,000 insurance on a house worth $1,500, stating in his application that there was no incumbrance on it. There was a $500 incumbrance on the house and lot, the latter being worth $6,500. *Held*, that, under Georgia law, this was not a material misstatement which would avoid the policy.—*Phœnix Ins. Co. v. Fulton*, S. C. Ga., Dec. 12, 1887; 4 S. E. Rep. 866.

163. INTERPLEADER — Judgment — Jurisdiction. —— When a judgment is claimed by assignment and also by attaching creditors in another State, the suit to compel them to interplead should be brought where the judgment was obtained.—*Orient I. Co. v. Sloan*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 388.

164. INTERSTATE COMMERCE—Regulating Railroads.—— Code North Carolina, § 166, imposing penalties for discrimination in freight charges by railroads, does not apply to freight transported to other States.—*McLean v. Charlotte, etc. R. Co.*, S. C. N. Car., February Term, 1887; 4 S. E. Rep. 769.

165. INTOXICATING LIQUORS—Evidence—Police Court. ——Statement of the measure of evidence necessary to convict a person in a police court of keeping liquors for unlawful sale.—*Holingsworth v. City of Atlanta*, S. C. Ga., Oct. 5, 1887; 5 S. E. Rep. 37.

166. INTOXICATING LIQUORS — Indictment.——An indictment or accusation of a party for selling liquor unlawfully to a named person and other unknown persons will be sustained only by proof of a sale to persons with whom the named person is present and associated.—*Moore v. State*, S. C. Ga., Oct. 28, 1888; 5 S. E. Rep. 51.

167. INTOXICATING LIQUORS — Repeal of Statutes.—— he law forbidding the granting of licenses to sell liquors outside of cities and towns does not conflict with the act allowing the commissioners of Beaufort and Berkley counties to issue such licenses.—*State v. Carter*, S. C. S. Car., Feb. 1, 1888; 4 S. E. Rep. 790.

168. INTOXICATING LIQUORS—Sales to Minors.——The offense of selling intoxicating liquors to minors is complete by a sale to one minor.—*Dukes v. State*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 876.

169. JUDGE — Special — Authority. —— A person appointed to act for the county judge during his disqualification has authority to act till everything is done in the cause, which could be done by the judge if he were not disqualified. — *Nebraska M. Co. v. Maxon*, S. C. Neb., Jan. 19, 1888; 36 N. W. Rep. 492.

170. JUDGMENT — Action on—Defenses.——A defense which might with proper diligence have been set up in the original suit, cannot be set up in a suit on the judgment. — *Snow v. Mitchell*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 737.

171. JUDGMENT — Amendment — Jury — Verdict.—— Where a judgment has been rendered against resident defendant and one non resident, upon the verdict of the jury, which was rendered in response to interrogatories by the court, it cannot be amended at a subsequent term so as to include a bond which was not mentioned in those interrogatories.—*Hall v. Huff*, S. C. Ga., Oct. 26, 1887; 5 S. E. Rep. 49.

172. JUDGMENT — Conclusiveness — Prohibition. —— Where A obtains a judgment before a justice of the peace on the verdict of a jury against B, the matter cannot be re-examined in an equity suit by B against A, and a writ of prohibition will run against B and the judge.—*Ensign, etc. Co. v. McGinnis*, S. C. App. W. Va., Dec. 2, 1887; 4 S. E. Rep. 782.

173. JUDGMENT —Defaults—Mistake.——Where an attorney employed by defendant fails by accident or mistake to understand that he is so employed, and consequently a judgment by default is rendered against defendant, such judgment will be set aside upon affidavit showing the facts.—*Bernstein v. Brown*, S. C. Neb., Jan. 6, 1888; 36 N. W. Rep. 359.

174. JUDGMENT — Interest. —— Where an action was brought on a closed account for $332.12, and judgment rendered for $356.13: *Held*, that the judgment was not excessive as the court manifestly allowed interest according to the statute.—*Ross v. Smith*, S. C. Ind., Jan. 28, 1888; 15 N. E. Rep. 268.

175. JUDGMENT—Judicial Sale—Collateral Attack.—— In an action by heirs to recover their ancestors' land sold at judicial sale, the validity of such sale and of the judgment directing it cannot be collaterally attacked by proof tending to show that the heirs were not served with process.—*Eward v. Moore*, S. C. N. Car., Feb. 20, 1888; 5 S. E. Rep. 13.

176. JUDGMENT — Lien —Notice.——A purchased land from B, both of whom purchased with the knowledge of the lien of a judgment, but were informed that a good title would be acquired: *Held*, that the judgment could be levied on the land, though the judgment was twice revived thereafter.—*Hardin v. Melton*, S. C. S. Car., Feb. 1, 1888; 4 S. E. Rep. 805.

177. JUDGMENT — Offer—Conditional Acceptance.—— When defendant offers to allow judgment to go against him for a certain sum, but in reply plaintiff asks for more, which defendant declines: *Held*, that it was error to allow the plaintiff to take judgment for the amount offered, though before trial he informed the defendant that he accepted the offer.—*Orth v. Zion's, etc. Co.*, S. C. Utah, Feb. 2, 1888; 16 Pac. Rep. 58.

178. JUDGMENT — Substitution —Consent.——When a judgment is stricken out and another substituted by consent, a complaint cannot be heard that such substitution was illegal.—*Cowles v. Curry*, S. C. N. Car., May 16, 1887; 4 S. E. Rep. 769.

179. JURISDICTION—Federal Courts—Amount.——When a suit for specific performance shows by the contract, that the value of the land was then $1,000, an amend-

ment stating it to be worth $3,000 brings the suit within the jurisdictional limits of the circuit court.—*Johnston v. Trippe*, U. S. C. C. (Ga.), Dec. 19, 1887; 33 Fed. Rep. 530.

180. JURISDICTION — Federal Courts — Venue—Officer.——A suit by a citizen of Ohio against citizens of Vermont, New York and Maine, to enforce a claim to property in Vermont, is properly brought in the district of Vermont. An injunction may be granted in a federal court to stay proceedings in a foreclosure sale by a public officer under a chattel mortgage.—*Carpenter v. Talbot*, U. S. C. C. (Vt.), Jan. 17, 1888; 33 Fed. Rep. 537.

181. JURISDICTION — Judge — Bill of Exceptions.——Where no objection is made to the judge at the time of trial, or to his authority to try the case, an objection cannot be made upon appeal. A mere statement by the judge as to how and why he came to try the case is not a bill of exceptions, and cannot be treated as such in the appellate court.—*Schlungger v. State*, S. C. Ind., Feb. 9, 1888; 15 N. E. Rep. 269.

182. JURISDICTION — Partnership —Administrator—Insolvency.——An action cannot be sustained as against a surviving partner, so as to affect the administrator of the deceased partner who resides in another county. The court has no jurisdiction unless insolvency is alleged so as to give equity jurisdiction. Jurisdiction cannot be waived so as to affect third persons.—*Knox v. Bates*, S. C. Ga., Nov. 23, 1887; 5 S. E. Rep. 61.

183. JUSTICES OF THE PEACE—Nonsuit.——On appeal trials in justices courts the magistrate cannot order a nonsuit for insufficiency of evidence.—*Favors v. Johnson*, S. C. Ga., Dec. 14, 1887; 4 S. E. Rep. 925.

184. LANDLORD AND TENANT—Crops—Mortgages.——The landlord's lien for rent and advances is paramount to any mortgage of the crop and he may assign it, but not the right to make advances. The registration of a mortgage operates as notice from the time it was left for registration. The mortgagee of an unplanted crop has an equitable title, and he may sue in his own name the purchaser, who, with notice of the mortgage, receives and sells the crop. — *Leslie v. Hinson*, S. C. Ala., Jan. 10, 1888; 3 South. Rep. 443.

185. LANDLORD AND TENANT—Lien for Rent—Delivery.——Cotton delivered to a landlord as rent is not, under Georgia law, subject to an execution against the tenant. — *Singleton v. Clack*, S. C. Ga., Jan. 20, 1888; 4 S. E. Rep. 896.

186. LANDLORD AND TENANT—Lien for Supplies.——A tenant agreed to pay a third of the crop raised, as rent, and verbally agreed that the entire crop should remain the landlords till his advances for supplies were paid off. A judgment creditor at this time of the tenant subsequently levied on a bale of cotton as property of the tenant: *Held*, that the creditor had piority.—*Almand v. Scott*, S. C. Ga., Jan. 20, 1888; 4 S. E. Rep. 892.

187. LIBEL AND SLANDER —Mutual Aid Association.——An action for slanderous words spoken of the plaintiff by a mutual aid association, of which he was then a member, will not lie against the association as a partnership, but against the individual wrong-doers.—*Gilbert v. Crystal F. Lodge*, S. C. Ga., Nov. 1, 1887; 4 S. E. Rep. 905.

188. LIMITATIONS — County Warrants—Lack of Funds.——County warrants were bought after they had been presented to the county treasurer for payment, who indorsed thereon "not paid for want of funds:" *Held*, that the statute of limitations begins to run, when the money for their payment is collected, or time sufficient for the collection of the money has elapsed.—*King, etc. Co. v. Otoe County*, U. S. S. C., Jan. 30, 1888; 8 S. C. Rep. 582.

189. LIMITATIONS — Easement — Specific Performance.——A purchased land and a right of way from B. B conveyed him the land and promised to convey the way: *Held*, that as the title to the land and the way was in A, the statute of limitations would not bar specific performance. — *Russell v. Napier*, S. C. Ga., Dec. 14, 1887; 4 S. E. Rep. 857.

190. LIMITATIONS — Mortgage — Foreclosure —Statute.——Under the statute laws of Illinois, a suit to foreclose a mortgage for deed of trust must be brought within ten years after the cause of action has accrued. If there has been a new promise to pay, or any payment made on the debt secured, the action must be brought within ten years after such promise or payment was made.—*Schifferstein v. Allison*, S. C. Ill., Jan. 20, 1888; 15 N. E. Rep. 275.

191. LIMITATIONS — New Promise.——A new promise, reviewing a note barred by the statute of limitations, must so plainly and clearly refer to or describe the very note as to identify it with reasonable certainty.—*Gartrell v. Linn*, S. C. Ga., Jan. 27, 1888; 4 S. E. Rep. 918.

192. LIMITATIONS — Partnership — Settlement. —— A suit for the settlement of a partnership is barred after six years from the last partnership transaction between the partners.—*Wells v. Brown*, S. C. Ala., Jan. 5, 1888; 3 South. Rep. 439.

193. LIMITATIONS—Open Accounts.——Under Georgia law, in the absence of an agreement otherwise, open accounts are barred in four years from the end of the year when they became due.—*Adkins v. Hutchings*, S. C Ga., Jan. 9, 1888; 4 S. E. Rep. 887.

194. LIMITATION OF ACTIONS —Receipts.——A receipt for jury tickets, which are named, with a promise to return or account for if used, is a written contract, and is barred in six years.—*Hill v. Hackett*, S. C. Ga., Dec. 14, 1887; 4 S. E. Rep. 856.

195. MANDAMUS—Municipal Corporation—Assessment —Contractor.——A *mandamus* will lie on behalf of a contractor to require municipal officers to compel abutting proprietors to pay assessments for street improvements made by him.—*City of Greenfield v. State ex rel.*, S. C. Ind., Jan. 21, 1888; 15 N. E. Rep. 241.

196. MASTER AND SERVANT—Negligence—Independent Contractor.——When a railroad contracts with a construction company to build and equip its road, it is not liable for any injury sustained on a part of it not accepted and operated by it.—*St. Louis, etc. R. R. v. Willis*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 728.

197. MINES — Ore — Pleading and Proof,—— In an action for taking ore from plaintiff's mining claim, defendant denied the existence of the mining claim, and denied taking ore from the claim: *Held*, that defendants could show title to the ore in a third person.—*Driscoll v. Dunwoody*, S. C. Mont., Jan. 19, 1888; 16 Pac. Rep. 726.

198. MINES —Patent—Assessment Work—Taking Ore.——After the money for a mine has been paid to the register in applying for a patent, no further annual assessment work is required. The damages for wrongfully taking the ore from a mine are the value of the ore on the dump, less the cost of hoisting.—*Alta, etc. Co. v. Benson, etc. Co.*, S. C. Ariz., Feb. 15, 1888; 16 Pac. Rep. 565.

199. MINES — Possessory Action—Placer Claims.——In an action to recover mining lands, defendant claimed he had entered in working a lode excluded from plaintiff's placer patent, which he had offered in evidence: *Held*, that plaintiff might then offer another patent and deed from the patentee to the part excepted from the first patent.—*Iron, etc. Co. v. Reynolds*, U. S. S. C., Jan. 23, 1888; 8 S. C. Rep. 598.

200. MORTGAGE—Sale —Power.——When a mortgage does not authorize the mortgagee to delegate his power of sale, a sale made by his agent will not deprive the mortgagor of his right to redeem, but he cannot bring an action of trespass to try title against the purchaser. —*Crafts v. Dougherty*, S. C. Tex., Jan. 13, 1888; 6 S. W. Rep. 850.

201. MUNICIPAL CORPORATIONS — Bridges.——Section 77, ch. 14, Comp. Stat., does not prevent a city situated on a stream, like the Loup river, from issuing bonds to aid in constructing a public bridge across such river, even though the bridge is outside of the corporate limits.—*State v. Babcock*, S. C. Neb., Jan. 10, 1888; 36 N. W. Rep. 474.

202. MUNICIPAL CORPORATIONS—House of Prostitution. ——An ordinance making it an offense to resort to a house of prostitution, is not authorized by the charter of the city of Ogden, nor by Comp. Laws Utah, p. 697, § 9.—*Ogden City v. McLaughlin*, S. C. Utah, Jan. 17, 1888; 16 Pac. Rep. 721.

203. MUNICIPAL CORPORATIONS—Improvements—Lien—Statute.——Construction of Indiana statutes relative to the procedure by, or on the half of municipal corporations to inforce liens for assessments on account of public improvements.—*Crowell v. Jaqua*, S. C. Ind., Jan. 27, 1888; 15 N. E. Rep. 242.

204. MUNICIPAL CORPORATIONS—Irrigating Ditches.—Liability.——Under Comp. Laws Utah, 1876, § 55, Salt Lake city is liable for an injury occurring, through its negligence, from a ditch constructed over private property.—*Levy v. Salt Lake City*, S. C. Utah, Oct. 1, 1887; 16 Pac. Rep. 598.

205. MUNICIPAL CORPORATIONS — Licensing Vehicles. ——Act of Kentucky, May 8, 1886, authorized the city of Louisville in licensing vehicles, to classify and grade the privilege according to the character of use made of the vehicle.——*Smith v. City of Louisville*, Ky. Ct. App., Feb. 9, 1888; 6 S. W. Rep. 911.

206. MUNICIPAL CORPORATIONS — Markets—Construction of Law.——In act 100, of 1878, private markets in New Orleans are forbidden to be nearer a public market than 3,100 feet, American measure.—*State v. Berard*, S. C. La., Feb. 13, 1888; 3 South. Rep. 463.

207. MUNICIPAL CORPORATIONS—Ordinances—Licenses. ——The law providing that no ordinance shall contain more than one subject, is mandatory upon a city of the second class.—*Stebbins v. Mayer*, S. C. Kan., Feb. 11, 1888; 16 Pac. Rep. 745.

208. MUNICIPAL CORPORATIONS — Powers.—— Every town and village incorporated under chapter 47 of the code, is a municipal corporation with common law powers, except as altered by statute. Its powers are exercised by a common counsel, which has the power to remove a corporate officer from his office.—*Richards v. Clarksburg*, S. C. App. W. Va., Nov. 26, 1887; 4 S. E. Rep. 774.

209. MUNICIPAL CORPORATIONS — Presentation of Claims—Presumption.——When a claim against a city of the third-class has been presented, referred to a committee of the council, and the committee reported the allowance of a portion thereof, it will be presumed that the claim was in writing and was presented as required by statute.—*City of Enterprise v. Fowler*, S. C. Kan., Feb. 11, 1888; 16 Pac. Rep. 703.

210. MUNICIPAL CORPORATIONS — Reorganization.—— Certain political obligations imposed by law on a city are not imposed on a city subsequently created by an act which abolished the former municipality.—*Carey v. City of Duluth*, S. C. Minn., Feb. 14, 1888; 36 N. W. Rep. 459.

211. MUNICIPAL CORPORATIONS—Slaughter Houses.—— Ch. 370, Sp. Laws 1887, supersedes the power granted to St. Paul in its charter about slaughter houses in its seventh ward.—*City of St. Paul v. Byrnes*, S. C. Minn., Feb. 8, 1888; 36 N. W. Rep. 449.

212. MUNICIPAL CORPORATIONS—Townships—Villages. ——Under the statute law of Minnesota, a village may be incorporated and have the powers of a municipal corporation for certain specified purposes, and yet its citizens retain for other purposes the rights and *status* of citizens of the township in which the village is situated.—*Bradish v. Lucken*, S. C. Minn., Feb. 10, 1888; 36 N. W. Rep. 454.

213. NEGOTIABLE INSTRUMENT — Indorsement. —— Where a note is signed by one person only, though it reads "we or either of us promise to pay," and is indorsed in blank by another person, that person is liable as second indorser after the payee.—*Neal v. Wilson*, S. C. Ga., Oct. 4, 1887; 5 S. E. Rep. 54.

214. NEGLIGENCE—Canals—Liability of State.——Circumstances stated under which it was held that the State was under no obligation to the public to keep a swing bridge over a canal upon its own land in proper condition and repair, and that the State was not liable in damages for the consequences of the negligence of the custodians of the bridge.—*Splittorf v. State*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 322.

215. NEGLIGENCE—Contributory—Overflow.—— Where defendant's dam causes water in a creek passing through plaintiff's land to overflow, plaintiff is entitled to recover, and he was not bound to do anything to avoid the consequences of defendant's act.—*Athens, etc. Co. v. Rucker*, S. C. Ga., Nov. 29, 1887; 4 S. E. Rep. 885.

216. NEGLIGENCE—Contributory—Street Railways.—— It is not negligence *per se* to walk along a highway on which a street car is following, if the traveler does not place himself in a position to be run over or injured by the car.—*Brooks v. Lincoln S. R. Co.*, S. C. Neb., Feb. 1, 1888; 36 N. W. Rep. 529.

217. NEGLIGENCE—Contributory Negligence.——Where a railroad company violates the laws of the State by running an engine at a greater speed than that prescribed by law, it is not liable for injuries inflicted upon a person who is guilty of contributory negligence. Walking on a trestle without looking for engines is such negligence.—*Strong v. Canton, etc. Co.*, S. C. Miss., Jan. 23, 1888; 3 South. Rep. 465.

218. NEGLIGENCE—Overflow — Proximate Cause.—— Where, by changing the course of a creek, A started beavers to work damming it up, and it overflowed his neighbor's land, he is liable for the injuries resulting.—*Cheeves v. Danielly*, S. C. Ga., Jan. 20, 1888; 4 S. E. Rep. 902.

219. NEGLIGENCE—Railroads — Trespasser.—— In an action against a railroad for negligence in injuring plaintiff while standing on a freight car, it is proper to prove that he was there by permission of the conductor, and was not a trespasser.—*Alacama, etc. R. Co. v. Yarbrough*, S. C. Ala., Jan. 11, 1888; 3 South. Rep. 447.

220. NEW TRIAL—Newly-discovered Evidence.—— A new trial will not be granted on the ground of newly-discovered evidence, which is only of an impeaching character, nor for any other newly-discovered evidence, unless it appears by affidavit that the party asking it was ignorant of its existence before the trial.—*Barrow v. State*, S. C. Ga., Feb. 6, 1888; 5 S. E. Rep. 64.

221. NUISANCE—Continuing Nuisance—Survival of Action.——Where a nuisance has been committed and continued after action brought and recovery had, the complainant may bring successive actions for the continuance of the nuisance. The defendant cannot escape liability by transferring to another the premises on which the nuisance is committed, but in case of his death the cause of action does not survive to the plaintiff against the representatives of the deceased.—*Sloggy v. Dilworth*, S. C. Minn., Feb. 10, 1888; 36 N. W. Rep. 457.

222. OFFICER—Municipal Corporation—Contract.—— Construction of Ohio statutes relative to contracts for the purchase of property for the use of a city or other municipal corporations. An officer of the State or city cannot be lawfully a party to such a contract.—*Doll v. State*, S. C. Ohio, Dec. 13, 1887; 15 N. E. Rep. 293.

223. OBSTRUCTION OF JUSTICE — Resisting Officer — False Imprisonment.——A third person, who claims property, has no right to resist an officer, who is about to seize it under legal process, and if such person is arrested by the officer he cannot maintain an action for false imprisonment.—*Braddy v. Hodges*, S. C. N. Car., Feb. 20, 1888; 5 S. E. Rep. 17.

224. PARENT AND CHILD—Support—Indictment.——If a husband sends his wife and 10 months' old child into another county, and fails to provide for the child, he is guilty of a misdemeanor, under Georgia law, though he have sufficient cause for refusing to live with the mother.—*Bennefield v. State*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 869.

225. PARTNERSHIP — Definition.——Where an agreement was entered into between A and B, that the latter should have 10 per cent. on all deposits made by him, but was not to have any share of profits or losses, and that his name was to be used in the firm: *Held*, that A

and B were partners.—*Clift v. Barrow*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 327.

226. PATENTS—Preserving Bonds.——Patent of April 2, 1867, to Francis Munson for preserving, filing and canceling bonds, etc., is void.—*Munson v. City of New York*, U. S. S. C., Feb. 13, 1888; 8 S. C. Rep. 622.

227. PLEADING — Counterclaim — Consideration.—— When a counterclaim for fraud in the goods sold alleges that plaintiff sold and defendant purchased, it is not demurrable as not expressing a consideration for the sale.—*Hessell v. Johnson*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 417.

228. PLEADING—Creditor's Bill.——When it is sought to reach by a creditor's bill property not subject to execution and on which no lien is given, it is not necessary to allege the issue of an execution and a return of *nulla bona*, but the fact that there is no adequate remedy at law may be shown by other means.—*Enright v. Grant*, S. C. Utah, Jan. 18, 1888; 16 Pac. Rep. 595.

229. PLEADING—Defective Streets—Negligence.——A declaration in an action against a city for negligently leaving a pile of sand in a street, must also allege that the city failed to place the proper lights and signals to prevent accidents.—*McCoull v. City of Manchester*, S. C. App. Va., Feb. 2, 1888; 4 S. E. Rep. 848.

230. PLEADING—False Imprisonment.——In an action for false imprisonment on a charge of assault and battery, the complaint, warrant and mittimus will not be held void for want of an allegation in the complaint of the time and place of the assault and battery, or that the same was unlawfully committed.—*Miller v. Wood*, S. C. Neb., Jan. 18, 1888; 36 N. W. Rep. 483.

231. PLEADING—Trespass—Proof.——Adverse possession of real estate not described in a petition for trespass to real estate is irrelevant to the case.—*Jennings v. Meldrum*, S. C. Oreg., Jan. 19, 1888; 16 Pac. Rep. 646.

232. PLEDGE—Change of Poseession—Pledge Holder. ——A threshing machine pledged for a loan was delivered to a third party to work and deliver the net profits to the pledgee. It was taken from the third party by his laborers, who worked it, for non-payment of their wages, and then attached by the pledgor's creditors: *Held*, that the pledgee was entitled to it.—*Hilliker v. Kuhn*, S. C. Cal., Oct. 28, 1886; 16 Pac. Rep. 707.

233. PRACTICE—Instructions.——No material error is committed in the refusal of a correct instruction, when its substance is given in other instructions.—*Haak v. Struve*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 686.

234. PRACTICE—Instructions.——In a suit for breach of a verbal contract for work and labor, the issues being the terms of the contract and the fact and manner of performance, the jury should be instructed to find what the contract was, its performance or waiver and modification, without assuming any material fact.—*Brooklyn, etc. Co. v. Peterson*, S. C. Colo., Jan. 27, 1888; 16 Pac. Rep. 563.

235. PRACTICE—New Trial—Conflicting Evidence.—— The granting of one new trial of a claim interposed to land levied upon under execution, the evidence, being conflicting, will not be disturbed on appeal.—*Smith v. Dobbins*, S. C. Ga., Dec. 12, 1887; 4 S. E. Rep. 855.

236. PRACTICE—Parties—Liability.——Under Wisconsin laws, when two are sued for goods sold and delivered, and it is proved that one of them purchased the goods, it is error to direct the jury to find for both defendants. —*Smith v. Cassell*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 386.

237. PRACTICE—Trial — Special Findings.——When a jury trial is had, each party may have submitted special questions as to a particular fact material to the controversy, and the court is to determine what questions are material.—*Elliott v. Reynolds*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 698.

238. PRINCIPAL AND AGENT — Action.——Where one loaning money for a company is not acting as a trustee, or does not have any interest in the money loaned, he cannot sue in his own name for the recovery thereof.—*Chin Kem You v. Ah Joan*, S. C. Cal., Feb. 16, 1888; 16 Pac. Rep. 705.

239. PRINCIPAL AND AGENT—Insurance Company.—— When an insurance company advances to their agent a sum of money monthly, to be expended by him in promoting the interest of the company, and its repayment to be chargable to the business secured by him, he is not personally bound for such repayment, and his sureties on his bond to the company are not liable therefor.—*Northwestern, etc. Co. v. Mooney*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 303.

240. PRINCIPAL AND SURETY—Collateral Security.—— A surety, who stands passively by, cannot claim exoneration from the payee for loss of property mortgaged as further security for the debt by the failure of the payee to foreclose the mortgage.—*Grisard v. Hinson*, S. C. Ark., Jan. 28, 1888; 6 S. W. Rep. 906.

241. PROBATE JUDGE—Fees—Enlarging Duties.——A probate judge, who took office and gave bond when such officers were restricted to salaries, must turn in all fees collected, including those prescribed under a law enacted during his term of office, and he and his bondsmen are liable therefor.—*Territory v. Carson*, S. C. Mont., Jan. 21, 1888; 16 Pac. Rep. 569.

242. PUBLIC LANDS—Donation Act of Oregon—Notice. ——When a settler, a married man, dies before giving the required notice, under the Oregon donation act, to the surveyor-general of the precise land claimed, his widow may do so in his place.—*Brazee v. Schofield*, U. S. S. C., Jan. 30, 1888; 8 S. C. Rep. 604.

243. PUBLIC LANDS — Homestead — Mortgage. ——A entered land, but his entry was erroneously canceled. A's wife then contracted with a railroad to buy it and assigned her contract, A assigning it to B to secure A's debts. The interest was foreclosed and C bought it. Subsequent to the assignment, by act of congress, A was enabled to make proof under his original entry: *Held*, that A had the better title.—*Kraft v. Baxter*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 739.

244. PUBLIC LANDS—Mexican Grant—Surveyor-general. ——The decisions of the surveyor-general of New Mexico, as to the validity and boundaries of Spanish or Mexican grants, are not binding upon the courts of New Mexico till confirmed by congress.—*Chaves v. Whitney*, S. C. N. Mex., January Term, 1888; 16 Pac. Rep. 608.

245. PUBLIC LAND—Statute—Boundary.——Construction of Virginia statutes relating to public lands, the priority of grants and the effect and operation of a resurvey.—*Randolph v. Longdale*, S. C. App. Va., Feb. 2, 1888; 5 S. E. Rep. 30.

246. QUIETING TITLE—Prima Facie Case.—— When the plaintiff has produced proper conveyances from the owner of real estate, showing a clear title in himself, he has *prima facie* proved that he is entitled to a decree removing a cloud from his title.—*Applegate v. Dowell*, S. C. Oreg., Dec. 19, 1887; 16 Pac. Rep. 651.

247. QUIETING TITLE—Sheriff's Deed.——When, in an action to quiet title, defendant claims through grantor's who obtained a deed from the sheriff on execution against the plaintiff, but the deed to defendant erroneously included other land belonging to the plaintiff: *Held*, that plaintiff was entitled to a decree quieting his title to that land.—*Lavender v. Holmes*, S. C. Neb., Feb. 8, 1888; 36 N. W. Rep. 516.

248. RAILROADS—Killing Stock — Negligence.——Proof of injury to stock, and that the injury was inflicted by a moving train, makes out a *prima facie* case for the plaintiff, under Alabama law, and the *onus* is on the defendant to overcome the presumption of negligence.—*Mobile, etc. Co. v. Caldwell*, S. C. Ala., Jan. 11, 1888; 3 South Rep. 445.

249. RECEIVER—Leave to Sue.——A receiver who has been sued and has answered to the merits, cannot object afterwards that the complaint did not allege that leave to sue him had been obtained.—*Elkhart, etc. Co. v. Ellis*, S. C. Ind., Jan. 28, 1888; 15 N. E. Rep. 249.

250. RECOGNIZANCES — Two Indictments — Forfeiture.

——When a person enters into two recognizances for his appearance, both may be forfeited, whether the indictments relate to the same matter or not.—*Henry v. McDaniel*, S. C. Ga., Dec. 3, 1887; 4 S. E. Rep. 906.

251. REMOVAL OF CAUSES—Non-residents.——A suit by an alien plaintiff against a non-resident corporation cannot be removed to the federal court.—*Harold v. Iron S. M. Co.*, U. S. C. C. (Colo.), Jan. 4, 1888; 33 Fed. Rep. 529.

252. REPLEVIN—Attached.——Property attached cannot be replevied by a third person, under laws of New Mexico.—*Butts v. Woods*, S. C. N. Mex., January Term, 1888; 16 Pac. Rep. 617.

253. REPLEVIN—Confusion of Goods.——When chattels of the same nature and quality, belonging to different persons, are mixed in one mass, any owner may recover his aliquot part by replevin.—*Grimes v. Cannell*, S. C. Neb., Jan. 10, 1888; 36 N. W. Rep. 479.

254. REPLEVIN — Officer — Damages. ——When, in a replevin suit against an officer, who holds the property by virtue of an attachment, the verdict is in his favor, he is entitled to recover the property, or in lieu thereof the value of his special interest therein.—*Shahan v. Smith*, S. C. Kan., Feb. 11, 1888; 16 Pac. Rep. 749.

255. REPLEVIN—Undertaking—Sureties—Statutes.—— An officer is not bound, under the laws of Nebraska, to accept an undertaking in replevin, unless it is executed by two or more good sureties, residents of the county.—*State v. Wait*, S. C. Neb., Jan. 10, 1888; 36 N. W. Rep. 380.

256. RES ADJUDICATA—Matters in Issue.——When a deed by A to B and C is subsequently set aside in equity, a deed by B to C of some of the land therein mentioned, made after the first deed, is not set aside, though B and C were parties to the suit.—*Applegate v. Dowell*, S. C. Oreg., Dec. 19, 1887; 16 Pac. Rep. 651.

257. RES GESTÆ — Negligence — Declaration of Foreman.——Where the foreman was on the ground and immediately after the injury, or within a half hour, directed the defect causing the injury to be repaired, his declaration of the unsafe condition of the appliance, made at this time, is admissible as part of the *res gestæ*.—*New York, etc. Co. v. Rogers*, S. C. Colo., Jan. 27, 1888; 16 Pac. Rep. 719.

258. SALE — Acceptance — Presumption. ——When lumber is to be sawed and piled up to dry, and is to be paid for within ninety days after being piled up, and the vendee is notified that it is piled up, his acceptance thereof is presumed, unless within a reasonable time he notifies the vendor of his refusal.—*Pratt v. Peck*, S. C. Wis., Jan. 31, 1888; 36 N. W. Rep. 410.

259. SALE — Warranty — Latent Defect. ——When a vendor states, on selling a horse, that its shortness of breath is caused by epizootic, when it is caused by another disease, under Georgia law this was a breach of warranty.—*Perdue v. Harwell*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 877.

260. SHIPPING—Carriage of Passengers — Regulations. ——A fine incurred by a merchant vessel by carrying too many passengers, under United States laws, is a lien thereon, but such lien cannot exceed the amount of the fine imposed upon the master upon criminal prosecution therefor. There is also a lien on the vessel for violating the law as to the size, position and arrangement of berths of steerage passengers, but not for not giving the collector a list of the passengers taken on board at any foreign port.—*The Strathairly*, U. S. S. C., Feb. 13, 1888; 8 S. C. Rep. 609.

261. SPECIFIC PERFORMANCE — Defendants Non-resident.——A suit for specific performance, where a non-resident defendant corporation is an essential party, over which no jurisdiction is obtained, and the bill fails to allege that the contract was made in the State or to be performed there, is subject to demurrer. When the contract is for personal services, involving continuous labor and care of a particular kind, an injunction against its breach will not be granted.—*Iron, etc. Co. v. Western U. T. Co.*, S. C. Ala., Jan. 16, 1888; 3 South. Rep. 449.

262. SPECIFIC PERFORMANCE—Optional Contract.—— A written agreement upon sufficient consideration to convey land within a given time at a given price at the option of the vendee is enforceable at the option of either party, if the proposed vendee signifies his acceptance within the time limited.—*Johnston v. Trippe*, U. S. C. C. (Ga.), Dec. 19, 1887; 33 Fed. Rep. 530.

263. STATUTES—Enactment—Presumptions.——A bill which is duly enrolled, authenticated and approved, is presumed to have been legally adopted, unless the contrary be made to appear, and the failure of the journals to show any fact not specially required to be entered therein does not overcome this presumption.—*State v. Peterson*, S. C. Minn., Jan. 30, 1888; 36 N. W. Rep. 443.

264. STATUTES OF FRAUDS — Obligation, Independent and Collateral. —— Distinction between original promises, required by the statute of frauds to be in writing, and those which are collateral to such original promises, definition of both classes.—*Rintoul v. White*, N. Y. Ct. App., Jan. 17, 1888; 15 N. E. Rep. 318.

265. SUBROGATION—Joint Purchasers—Partition.—— When two persons give their joint note for land, the vendor retaining his lien, and one of them pays it off, he is subrogated to the vendor's lien, and can assert it against the purchaser of the interest of his copurchaser after partition.—*Dowdy v. Blake*, S. C. Ark., Jan. 28, 1888; 6 S. W. Rep. 897.

266. SURETY — Subrogation — Tax-collector. ——The sureties of a tax-collector having paid to the State and county all the money that their principal might have collected and paid, are entitled to be subrogated to the rights of the State, to collect the taxes that their principal ought to have collected, and to hold them for their reimbursement.—*Livingston v. Anderson*, S. C. Ga., Jan. 13, 1888; 5 S. E. Rep. 48.

267. TAXATION—Collection—Signature.—— The service of a tax *fi. fa.*, signed by A as an individual, which does not show anywhere that A is the tax-collector, is not a legal process.—*Short v. State*, S. C. Ga., Nov. 23, 1888; 4 S. E. Rep. 852.

268. TAXATION—Illegal Levy—Mistake in Receipt.—— When payment of taxes is refused because the basis of the levy was the value of the property August 1, 1874, when it should have been that of August 1, 1875, the taxes cannot be sustained, because the receipt designated the taxes as for the year 1875, instead of 1876, as in the receipts of other tax-payers.—*State v. Union Trust Co.*, S. C. Mo., June 6, 1887; 6 S. W. Rep. 867.

269. TAXATION—Insurance Premiums.——The gross premiums received by every insurance company, except mutual companies without stock, in the year previous to the year of listing, are assessable as personal property in the hands of its agent in the county where he does his business.—*Phœnix Ins. Co. v. City of Omaha*, S. C. Neb., Feb. 8, 1888; 36 N. W. Rep. 522.

270. TAXATION—Purchaser at Sale—Lien.——In an action by a purchaser at a tax-sale for the settlement of his title and interest in the land and for a lien thereon, though his tax-deed may be illegal, he is entitled to a lien for the amounts paid and interest thereon, if the taxes were legal.—*Merriam v. Rauen*, S. C. Neb., Jan. 18, 1888; 36 N. W. Rep. 489.

271. TAXATION—Quieting Title—Res Adjudicata.—— Where a bill to quiet title has been filed, adjudicated and carried to the supreme court where the judgment is reversed and the case remanded, with permission to plaintiff to amend his petition, and no further steps are taken: *Held*, that such judgment so rendered and reversed is not *res adjudicata* and binds neither party.—*Merriam v. Dovey*, S. C. Neb., Jan. 10, 1888; 36 N. W. Rep. 382.

272. TAXATION—Railroads — Exemptions.——When a railroad and its warehouses are exempt from taxation, an elevator necessary for and used as a warehouse, situated at some distance from the road on account of natural disadvantages, is exempt, and so much land as is necessary for spurs and side tracks, connecting it

with the railroad.—*State v. Nashville, etc. R. Co.*, S. C. Tenn., Feb. 18, 1888; 6 S. W. Rep. 880.

273. TAXATION—Railroads—Levy.——Under Act Missouri, March 15, 1875, railroad property must be taxed at the same rate as other property. A county court can levy a tax on railroad property to pay interest on railroad bonds, only on an order from the circuit court upon proper application.—*State v. Missouri P. R. Co.*, S. C. Mo., April Term, 1887; 6 S. W. Rep. 862.

274. TAXATION—Sale—Part of Tract.——When land is assessed as an entirety, the sale of a part of it for a portion of the tax is void.—*Heil v. Redden*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 743.

275. TELEGRAPH COMPANY—Negligence—Damages.——A telegraphed B to buy for him 10,000 barrels of petroleum. The message was negligently delayed, and when received petroleum had advanced and B did not buy: *Held*, that A was entitled to only nominal damages.—*Western U. T. Co. v. Hall*, U. S. S. C., Jan. 30, 1888; 8 S. C. Rep. 577.

276. TRIAL—Conflict of Evidence—Directing Verdict.——Where, upon the trial of an issue in replevin, the evidence upon a material point is on each side direct and conflicting, it is error to charge the jury that they should find for the defendant.—*Adams v. Berg*, S. C. Miss., Jan. 30, 1888; 3 South. Rep. 465.

277. TROVER AND CONVERSION—Purchaser—Demand.—— A placed his wheat in B's warehouse on a contract of sale to C on payment of the price. B delivered the wheat to D on C's order before it was fully paid for: *Held*, that A could sue D for a conversion without making a previous demand.—*Velzian v. Lewis*, S. C. Oreg., Jan. 2, 1888; 16 Pac. Rep. 631.

278. TRUSTS—Debts of Cestui Que Trust—Liability.——A was trustee in a deed of gift by a wife to her husband. She resided on the land and was allowed to rent out the land to tenants: *Held*, that the rent was liable for her debts.—*Henderson v. Zachry*, S. C. Ga., Jan. 13, 1888; 4 S. E. Rep. 883.

279. TRUSTS—Executed.——A devise of land in trust for the sole and separate use of a female child, free from all debts or contracts of any husband, with remainder to her children, becomes, on the death of her husband, an executed trust.—*Caswell v. Lovett*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 866.

280. TRUST—Parol Agreement—Statutes of Frauds.——A parol agreement that one shall sell land and hold its proceeds for the benefit of another creates a trust which may be enforced after the sale has been made, and is not within the statute of frauds.—*Thomas v. Merry*, S. C. Ind., Jan. 20, 1888: 15 N. E. Rep. 244.

281. TRUSTS—Resulting—Evidence.——An agreement that the mortgagee should buy in the property at foreclosure sale and allow the mortgagor to redeem, is sufficiently shown by evidence that both treated the property as the mortgagor's after the sale, and that the mortgagee indorsed the master's deed therefor and delivered it to the mortgagor.—*Sullivan v. Sullivan*, S. C. Tenn., Feb. 18, 1888; 6 S. W. Rep. 876.

282. TRUST—Resulting Trust—Incumbrance.——Where one pays off an equitable mortgage and directs the mortgagee to deed the land to the defendant, there is no resulting trust in his favor, or after his death in favor of his heirs.—*Boyer v. Floury*, S. C. Ga., Jan. 30, 1888; 5 S. E. Rep. 63.

283. VENDOR—Lien—Failure of Title.——A sold land to B, taking his notes therefor, but had previously sold the land to C. A indorsed the notes to D. B demanded his notes from D, and subsequently, with the consent of A and D, bought the title from C: *Held*, that D had no lien on the land by virtue of the notes.—*Harper v. Wilkins*, S. C. Miss., Jan. 30, 1888; 3 South. Rep. 455.

284. WILL—Codicil—Construction.——A testator divided his estate equally among his children. By a codicil he appointed trustees for a daughter's share, and if she became a widow the trustees should pay her $500 and the balance to the executors for distribution. She became a widow before his death: *Held*, that the children should share equally.—*Langford v. Langford*, S. C. Ga., Dec. 3, 1887; 4 S. E. Rep. 900.

285. WILL—Devise—Construction—Life Estate.——Where a testator, by will, directs that the share of any of his children who should die without issue shall be divided among the other children, the will gives to each child only a life estate in his share.—*Galloway v. Carter*, S. C. N. Car., Feb. 20, 1888; 5 S. E. Rep. 4.

286. WILL—Execution—Witness—Proof—Statute.——Under the code of Georgia, a person nominated as sole executor is a competent witness to prove the execution of the will.—*Baker v. Bancroft*, S. C. Ga., Oct. 4, 1887; 5 S. E. Rep. 46.

287. WILLS—Life Estate—Income.——When a testator devises his estate in trust, and by a a single clause provides that one-half of the income shall be paid to his son, and one-half to his daughter, for life, it is a devise to each in severalty of a life estate in one-half of the property.—*Palms v. Palms*, S. C. Mich., Feb. 2, 1888; 36 N. W. Rep. 419.

288. WILL—Life Estate—Vested Remainders.——When a will conveys real and personal estate to A for life and at her death to the children of testator's brothers and sisters, such children living at testator's death take vested remainders.—*Legwin v. McRel*, S. C. Ga., Nov. 22, 1887; 4 S. E. Rep. 863.

289. WILLS—Limitations—Perpetuities.——Where a testator leaves his property to his two children, and upon the death of either without children then living his share to go to the other, and upon the death of the survivor without children then living all of the property to go to certain designated parties, such limitations are valid.—*Brown v. Brown*, S. C. Tenn., Jan. 30, 1888; 6 S. W. Rep. 869.

290. WILLS—Olograph.——A will wholly in the handwriting of the testator, containing an attestation clause unsigned by witnesses, is valid, under Virginia law, and another paper of a testamentary character, written and signed by him, bearing the same date, found folded up with said will, though not expressly referring to the will, is a valid codicil.—*Perkins v. Jones*, S. C. App. Va., Jan. 19, 1888; 4 S. E. Rep. 833.

291. WILLS—Perpetuities.——A limitation, though invalid as creating a perpetuity, will not be allowed to defeat the primary dispositions of the will, but will be cut off, whether in the case of a trust or of a limitation of the real estate.—*Palms v. Palms*, S. C. Mich., Feb. 2, 1888; 36 N. W. Rep. 419.

292. WILLS—Trust—Power.——A will which gives to a trustee real estate to be held for the use of a daughter of a testator, with power to manage as may seem to him most prudent and safe, confers upon the trustee the legal title, and authorizes him to sell the real estate.—*Boston, etc. Co. v. Mixter*, S. J. C. Mass., Jan. 10, 1888; 15 N. E. Rep. 141.

293. WITNESS—Credibility—Statute.——In Massachusetts, by statute, the previous conviction of a witness of any crime within felony or misdemeanor, may be shown to effect his credibility.—*Commonwealth v. Ford*, S. J. C. Mass., Feb. 6, 1888, 15 N. E. Rep. 153.

294. WITNESS—Deceased Party.——One not a party to a bond, but who received money from the obligor to pay it, is competent, under Virginia law, to prove payment, though the obligee is dead.—*Wager v. Barbour*, S. C. App. Va., Jan. 26, 1888; 4 S. E. Rep. 842.

295. WITNESS—Impeachment—Former Conviction.——An incomplete transcript is not sufficient to prove a conviction in another court.—*Doggett v. Simms*, S. C. Ga., Jan. 9, 1888; 4 S. E. Rep. 909.

296. WITNESS—Juror—Examination.——When a juror at a former trial is called to testify as to the testimony at that trial of A, now deceased, it is error to examine him as to the deliberations of that jury.—*State v. Huffman*, S. C. Oreg., Jan. 23, 1888; 16 Pac. Rep. 640.

297. WRITS—Accepting Service—Unauthorized.——When, in a suit on a note, an attorney accepts service

for the defendant and subsequently enters his appearance, and judgment goes against the defendant, the judgment and all the proceedings are void, if the attorney had no authority to represent the defendant.—*Ashmore v. McDonnell*, S. C. Kan., Jan. 7, 1888; 16 Pac. Rep. 687.

298. WRITS—Jurisdiction—Dismissal—Appearance.—In a personal action against A and B, A was served in the county where the suit was brought, and B was served in another county, and before B answered the plaintiff dismissed the suit against A: *Held*, that the court lost jurisdiction thereby over B. *Held*, also, that after judgment by default against B, B might specially appear and ask to have the default set aside, and after his motion was granted might enter a plea in abatement to the jurisdiction without having made a general appearance.—*Cobley v. Wright*, S. C. Neb., Jan. 25, 1888; 36 N. W. Rep. 505.

299. WRITS—Service—Appearance.—Appearance and pleading in writing to the merits will waive service, unless want of service be pleaded at the same time. In Georgia, matters in abatement and in bar may be pleaded in the same answer.—*Western, etc. R. Co. v. Pitts*, S. C. Ga., Dec. 14, 1887; 4 S. E. Rep. 921.

300. WRITS—Service of Publication—Affidavit.—Service by publication, based on an affidavit of due diligence in seeking the defendant, but not stating the facts showing the diligence used, is void.—*Alderson v. Marshall*, S. C. Mont., Jan. 10, 1888; 16 Pac. Rep. 576.

QUERIES AND ANSWERS.*

[*Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.*]

QUERY NO. 16.

A will, made in the State of Indiana, divising certain lands in that State, provides, "that the foregoing lands are for the use and benefit of my daughter Jane during the term of her natural life and to her and to the heirs of her body, if any there be, forever; but if at the time of her death she shall not have any living child or children, then, in that case, I give and bequeath and devise the reversion and remainder of the above described lands to A, B and C, share and share alike, or the the survivors of them, and the survivors of their children." 1. The rule in Shelley's Case being the law in Indiana, does not Jane take the fee in the lands? 23 Ind. 30; 26 *Id.* 251; 109 *Id.* 476; 111 *Id.* 391. 2. Would not a quitclaim from A, B and C release their right, if any, it being conceded that Jane has no issue and cannot have children? 3. Is the remainder over to the children of A, B and C, and their survivors, void as being in conflict with Rev. Stats. of Ind. 1881, § 2962? Q.

QUERY NO. 17.

A sold a tract of forty acres to B in 1858; in 1861 B sold said forty acres to C. C has lived on land ever since and made many improvements thereon; both B and C gave full value for land. In the deed from A to B, A described the wrong forty acres—likewise did B when he sold to C. About two years ago C ascertained that there was a mistake in description. In 1860, A sold another forty acres to D, which forty acres is described in sale from A to B. D took possession of said forty acres and subsequently sold it and it is now owned by divers parties. The various deeds were recorded in order of sales. A was a bachelor, and after disposing of all his lands, as he supposed, went back to his native home. He has not been heard from in about twenty years; rumor says he is dead. He left no heirs to the knowledge of any one about here. The title (paper) to the first forty acres is still in A. The statute of limitations is five years. Of course C has good title against all the world, but there is a cloud on it. C's land is now very valuable and parties desire to buy it, but object to paying full value owing to defective title. Query: How can C remove cloud? If suit be brought, who will be party defendant? SUBSCRIBER

QUERIES ANSWERED.

QUERY NO. 15 [*26 Cent. L. J. 307.*]

Does a vacancy occur in the office of alderman in a city of the fourth class in Missouri (the ordinances being silent on the subject), by reason of an alderman removing from one ward to another? And should an alderman so remove from one ward to another, and after such removal participate in the adoption of an ordinance, would the ordinance be legally adopted and binding? MARQUAND.

Answer. The incumbent of a public office is only required to possess the qualifications which the law demands. Such an alderman is only required to be a resident of the city. 2 Rev. Stat. Mo. 982, § 4938. Such a removal in no way affects his office as alderman. T.

QUERY NO. 14 [*26 Cent. L. J. 307.*]

A purchases lots 1 and 2, block —, city of ——, Wis. These lots abut in front on Second street, and the east side of lot 1, on Northern avenue. The avenue is shortly afterwards vacated and discontinued. It, the vacated avenue, is unimproved, and has never been fenced in. A conveys to B lots 1 and 2, block —, etc., as in the deed to him, A. Does B take the west half of the vacated way by this grant? Can he enforce specific performance of a contract of sale of such west half with the adjoining lots? H.

Answer. The inference is, that the deed to A described lot 1 as bounded on the east by Northern avenue, or referred to the property as lot 1, adopting the city plat. In either case, under Wisconsin law, A obtained title to the middle of the avenue. Pettibone v. Hamilton, 40 Wis. 402; Kimball v. Kenosha, 4 Wis. 321; Hegar v. Chicago, etc. R. Co., 26 Wis. 624. If the deed from A to B describes the lots by reference to the city plat, B takes to the middle of the avenue. Sherfeldt v. Spaulding, 37 Wis. 662. If the deed bounds the lot by Northern avenue, and that avenue is not closed up though discontinued, B obtains the same interest. Ott v. Kreiter, 110 Pa. 370. If B obtains any title he needs no further conveyance from A, and therefor cannot compel him to make a new deed.

RECENT PUBLICATIONS.

FEDERAL DECISIONS. Cases Argued and Determined in the Supreme, Circuit and District Courts of the United States. Comprising the Opinions of those Courts from the Time of their Organization to the Present Date, together with Extracts from the Opinions of the Court of Claims and the Attorneys-General, and the Opinions of General Importance of the Territorial Courts. Arranged by William G. Myer, Author of an Index to the United States

Supreme Court Reports; also Indexes to the Reports of Illinois, Ohio, Iowa, Missouri, and Tennessee, a Digest of the Texas Reports, and local works on Pleading and Practice. Vol. XXI. Laches—Land. St. Louis, Mo.: The Gilbert Book Company. 1888.

We have received volume XXI of "Federal Decisions," which has just been published out of its term, as for reason satisfactory to the publishers; volumes XXII and XXV have been already published and have been duly reviewed in these pages. Seven more volumes, which we learn will all be issued during the current year, will complete this admirable and very extensive work, which will be a lasting monument alike to the ability and energy of the editor and the enterprise of the publishers. The subjects treated in this volume are of special importance, beginning with laches and ending with land, and in all respects the volume is fully equal to any other of the series. We need hardly repeat our commendations of this admirable collection, as its merits are now well known throughout the profession.

THE AMERICAN DECISIONS, Containing the Cases of General Value and Authority Decided in the Courts of the Several States from the Earliest Issue of the States Reports to the Year 1869. Compiled and Annotated by A. C. Freeman, Counselor at Law, and Author of Treatises on the "Law of Judgments," "Co-tenancy and Partition," "Executions in Civil Cases," etc. Vol. XCV. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers. 1888.

We are in receipt of the ninety-fifth volume of this excellent collection of selected cases, and as we have so recently noticed its immediate predecessors we can add nothing to the terms of commendation which we bestowed upon them, and can only say that this volume is fully equal in all respects to the general standard of the series. The collection is now rapidly drawing to its conclusion, and when complete will be a lasting monument to the learning and acumen of the editor and the enterprise of the publishers.

A DIGEST OF THE LAW OF INSURANCE: Being an Analysis of Fire, Marine, Life and Accident Insurance Cases, Adjudicated in the Courts of the United States, England, Canada, Ireland and Scotland, Including the Cases Relating to Insurance in Mutual Benefit Societies. (In continuation of Sansum's Insurance Digest.) By John R. Berryman. Chicago: Callaghan & Company. 1888.

This is a carefully prepared digest of the law relating to a subject which is of great practical importance in all commercial countries, and more so, perhaps, in ours than in any other. The law of insurance has been growing rapidly for many years past, in volume and in importance, and especially so since the great increase has taken place in insurance business, through the instrumentality of associations, mutual benefit societies and other like organizations. The scope of this work includes the decisions of the courts of England, Canada, Ireland and Scotland and the United States, thus including nearly all the countries in which the common law system forms the basis of legislation and adjudication. The object of the author has been to present to the reader, under appropriate and carefully selected heads, all, and especially the latest, decisions of all the courts bearing upon the subject, indicating those which, by subsequent adjudication, have been limited, qualified or modified in any respect. We have no doubt that this work will prove of great service to all practitioners who may be interested in the subject of insurance, and it well deserves a place in every law library.

JETSAM AND FLOTSAM.

A JURYMAN out west was asked whether he had been charged by the judge. "Well," said he, "the fellow that sits up in the pulpit, and kinder bosses it over the crowd give us a talk, but I don't know whether he charges anything or not."

"DID you hear the sad news about Jinks?" asked Gus Snobberly of Charlie Knickerbocker. "No; what is it?" "He was drowned while rowing a boat in Central Park." "Couldn't he swim?" "That wouldn't have made any difference. Swimming in Central Park is strictly prohibited, and the park police enforce the law, you know. If he had tried to swim he would have been clubbed to death."

THE following is a proclamation made at the Market Cross of Inverary, Scotland, less than a hundred years ago: "Ta hoy! Te tither a-hoy! Ta hoy three times!!! an' ta hoy—Whist! By a command of his majesty, King George, and her Grace te Duke of Argyll: If anybody is found fishing about te loch, or below te loch, afore te loch, or ahint te loch, in te loch, or on te loch, aroun' te loch, or about te loch, she's to be persecuted wi' three persecutions: first, she's to be burnt, syne she's to be drownt and then to be hangt—an' if ever she comes back she's to be persecuted wi' a far waur death. God save te King an' her Grace te Duke o' Argyll."

JUDGE—"Stand up."

Prisoner—"I claim the right under the law to remain seated, Y'r Honor."

"How so?"

"The law says no man can be made to criminate himself, an' if I stand up I'll criminate myself."

"That point is well taken and you may remain seated. You are accused of stealing a pair of breeches from this man, but I can find no evidence against you."

"None at all, Y'r Honor."

"You are discharged."

"Thank you, Y'r Honor."

"By the way, why were you unwilling to stand up?"

"If I stood up the man would see I had his breeches on, Y'r Honor."

SHREWD JUDGE.—The following is told of a New York judge before whom a man was being tried for stealing the gold watch of a woman as she was taking a street-car. The neatness of the examination will remind the reader of Oriental stories.

The man declared that the watch was his, and the woman was mistaken in identifying it as hers. Suddenly the judge asked, "Where's the key?"

The prisoner fumbled in his pockets, and said he must have left it at home.

The judge asked him if he had wound the watch frequently with the key, and he said "Yes."

Then a key was procured, watch and key were handed the prisoner, and he was told to wind the watch. He opened the case, but could not find any place to use the key, because the watch was a stem-winder.

The sentence was five years and a half.